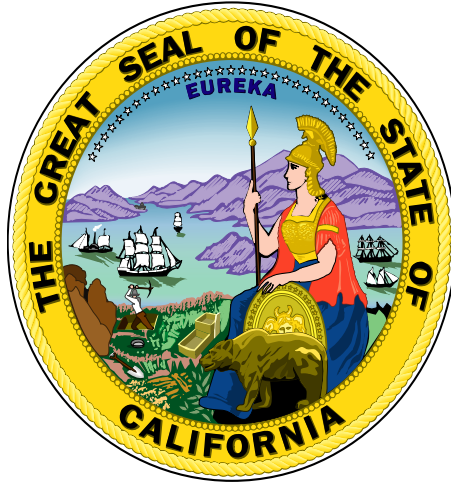


# **The California Commission on Health and Safety and Workers' Compensation**



## **CHSWC 2008 Annual Report**

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**Catherine Aguilar**  
**Allen Davenport**  
**Sean McNally**  
**Kristen Schwenkmeyer**  
**Robert B. Steinberg**  
**Darrel "Shorty" Thacker**

### **Executive Officer**

**Christine Baker**

**State of California**  
**Labor and Workforce Development Agency**

**Department of Industrial Relations**

**December 2008**

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## ABOUT CHSWC

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC utilizes its own staff expertise combined with independent researchers with broad experience and highly respected qualifications.

At the request of the Executive Branch, the Legislature and the Commission, CHSWC conducts research, releases public reports, presents findings, and provides information on the health and safety and workers' compensation systems.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations participate in CHSWC meetings and fact-finding roundtables and serve on advisory committees to assist CHSWC on projects and studies.

CHSWC projects address several major areas, including permanent disability (PD) ratings and related benefits, State Disability Insurance (SDI), return to work, carve-outs and medical fee schedules. Additional projects address benefits, medical costs and quality, fraud and abuse, streamlining of administrative functions, informational services to injured workers, alternative workers' compensation systems, and injury and illness prevention. CHSWC also continually examines the impact of workers' compensation reforms.

The most extensive and potentially far-reaching project undertaken by CHSWC is the ongoing study of workers' compensation PD ratings. Incorporating public fact-finding hearings with studies by RAND, the CHSWC PD project analyzes major policy issues regarding the way that California workers are compensated for PD incurred on the job.

CHSWC engages in a number of studies and projects in partnership with other state agencies and the workers' compensation community including: the Labor and Workforce Development Agency (LWDA), the Department of Industrial Relations (DIR), the California Department of Insurance (CDI), the Fraud Assessment Commission (FAC), the Governor's Office of Homeland Security (OHS), the California HealthCare Foundation (CHCF), RAND, the National Academy of Social Insurance (NASI), and the International Association of Industrial Accident Boards and Commissions (IAIABC). CHSWC projects and studies are described in this report.

### CHSWC

#### *Serving all Californians*

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate and Assembly to represent employers and labor.
- Charged with examining the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the State's activities to prevent industrial injuries and occupational diseases and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community – employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various health and safety and workers' compensation programs critical to all Californians.
- Serves as a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to ensure objectivity and incorporate a balance of viewpoints and to produce the highest-quality analysis and evaluation.

## ABOUT CHSWC

### CHSWC Members Representing Employers

#### Catherine Aguilar



Catherine (Cathy) Aguilar is an independent consultant currently working with Gitter and Associates providing consulting in many areas of workers' compensation. She has been active in the workers' compensation industry for over 25 years, working her way up from the mail room to claims examiner, supervisor, manager, director and vice president of claims for a national third-party administrator (TPA). In addition, Ms. Aguilar worked for Costco Wholesale as their regional director for the East Coast workers' compensation program and managed the workers' compensation program for the San Diego Schools Joint Powers Association.

Ms. Aguilar has been an active member of the California Coalition on Workers' Compensation and is currently an active member of the San Diego Chapter of Risk Insurance Managers Association. She is also a member of the San Diego Public Agencies Risk Management Association (PARMA). Over the years, she has taught various courses for the Insurance Education Association.

Appointed by: Governor

#### Sean McNally



Sean McNally is the vice president of Corporate and Government Affairs for Grimmway Farms in Bakersfield, California. He is certified by the State Bar of California as a specialist in workers' compensation law. He is a licensed general contractor and serves as a trustee for the Self Insurer's Security Fund. His community activities include serving on the Kern Adult Literacy Council Board of Directors as the president, and as a member of the Board of Directors of the Golden Empire Gleaners and the Board of Trustees for Garces Memorial High School.

Mr. McNally is a graduate of the University of the Pacific, McGeorge School of Law and was a partner at the law firm of Hanna, Brophy, MacLean, McAleer and Jensen. He graduated from the University of San Francisco with Bachelor of Arts degrees in English and Theology. Following that, he did graduate studies at Hebrew University in Jerusalem, Israel.

Appointed by: Governor

## ABOUT CHSWC

### CHSWC Members Representing Employers

#### **Kristen Schwenkmeyer**

Kristen Schwenkmeyer is secretary-treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and personnel for a staff of over 700.

Previously, Ms. Schwenkmeyer served as staff aide to Supervisor Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington, D.C.

Ms. Schwenkmeyer received a Bachelor of Arts degree in Political Science from the University of California, Santa Barbara.

Appointed by: Senate Rules Committee

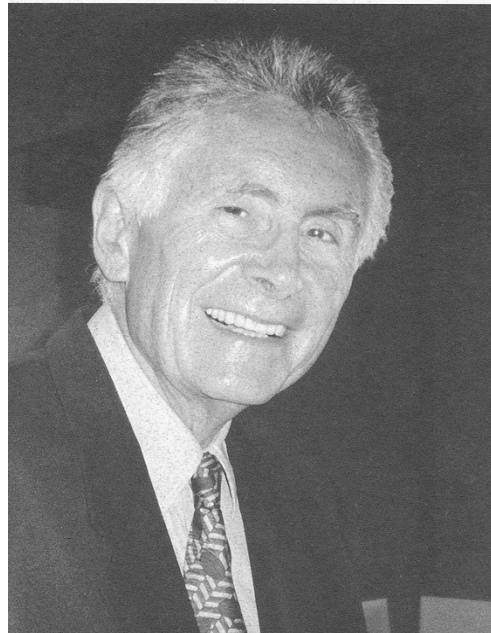


#### **Robert B. Steinberg**

Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third-party civil damage construction, product liability, asbestos and toxic exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the Board of Governors of the Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and a trustee of the Asbestos Litigation Group (ALG). He is a past president of the California Trial Lawyers (CTLA) (1985) and a past trustee of the Los Angeles County Bar Association (1987).

Mr. Steinberg received Law and Bachelor of Science degrees from the University of California, Los Angeles.

Appointed by: Speaker of the Assembly





## ABOUT CHSWC

### CHSWC Members Representing Labor



#### **Allen Davenport**

Allen Davenport is the director of government relations for the Service Employees International Union (SEIU) California State Council. A union member since 1971, Mr. Davenport also was the chief consultant for the employment security program for unemployment insurance, disability insurance, and job training on the staff of the state Senate Industrial Relations Committee for seven years.

Mr. Davenport serves on the advisory committee for the Workers' Compensation Information System (WCIS) and was a member of the governing board of the Workers' Compensation Insurance Rating Bureau (WCIRB). He is a former Peace Corps volunteer and a graduate of San Francisco State University.

Appointed by: Speaker of the Assembly



#### **Darrel "Shorty" Thacker**

Darrel "Shorty" Thacker is the central district manager for the Northern California Carpenters' Regional Council. Mr. Thacker also served as the director of field support operations for the Bay Counties District Council of Carpenters and as the senior business representative of Local 22, Carpenters.

Mr. Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Mr. Thacker earned an Associate of Arts degree in Mathematics from Fresno City College in 1970.

Appointed by: Governor

## ABOUT CHSWC

### CHSWC Members Representing Labor

#### Angie Wei

Angie Wei is the legislative director of the California Labor Federation, the state AFL-CIO Federation. The state Federation represents 1,200 affiliated unions and over two million workers covered by collective bargaining agreements. Previously, Ms. Wei was a program associate for PolicyLine of Oakland, California, and advocated for the California Immigrant Welfare Collaborative, a coalition of four immigrant rights organizations that came together to respond to cuts in public benefits for immigrants as a result of the 1996 federal welfare reform law.

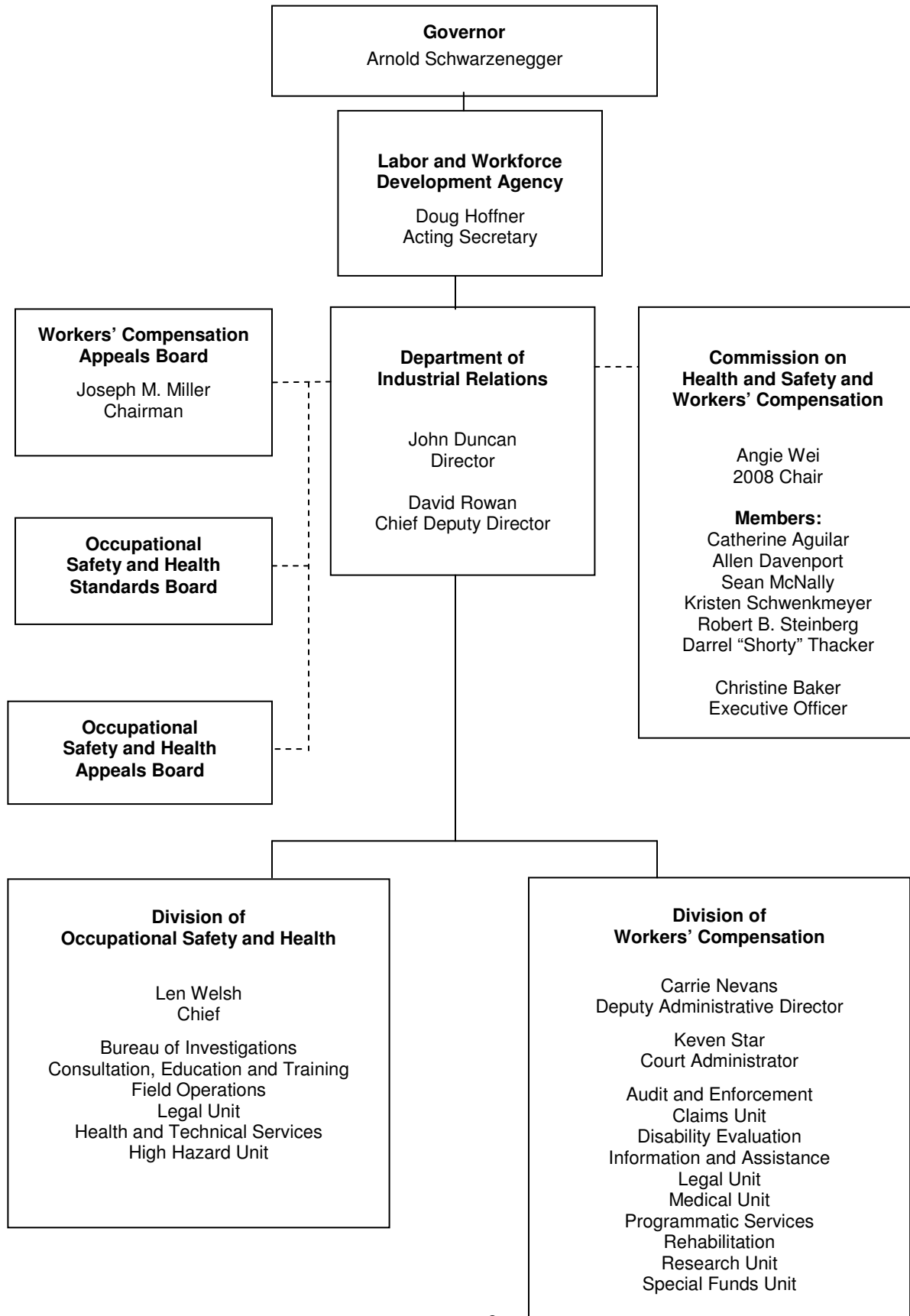
Ms. Wei holds a Bachelor of Arts degree in Political Science and Asian American Studies from the University of California, Berkeley and a Master of Arts degree in Public Policy from the Kennedy School of Government at Harvard University.

Appointed by: Senate Rules Committee



## ABOUT CHSWC

### State of California Health and Safety and Workers' Compensation Functions



## **CHSWC RECOMMENDATIONS**

### **ONGOING EVALUATION OF THE HEALTH AND SAFETY AND WORKERS' COMPENSATION SYSTEM**

The Commission on Health and Safety and Workers' Compensation (CHSWC) was created in 1993 to conduct an ongoing examination of the workers' compensation system and of the State's activities to prevent industrial injuries and occupational diseases and to make recommendations to the Governor and the Legislature for improvements.

CHSWC is a forum for labor and employers, the key stakeholders in the health and safety and workers' compensation systems. To carry out its Labor Code mandate and in collaboration with the workers' compensation community, CHSWC engages in studies to examine the health and safety and workers' compensation systems in California and provide an empirical basis for recommendations and/or further investigation into key areas of health and safety and workers' compensation.

CHSWC studies are conducted by staff and independent researchers under contract with the State of California. Interested members of the workers' compensation community and the public provide comments, suggestions, data and feedback.

CHSWC studies and projects monitor and evaluate changes to the system to assess the impact on workers and employers. Findings from those studies have led to further improvements. The recommendations that follow are based on CHSWC studies and projects.

#### *Recommendation*

- Conduct ongoing evaluation and monitoring of the system including evaluation of whether the goals of past reforms are being realized and whether further changes are needed.

### **Return to Work and Disability Management**

Research supports the observation that return to work (RTW) at the earliest appropriate time reduces the long-term wage loss of an injured worker and the costs borne by employers.

Earlier CHSWC studies by RAND found that California consistently had poor RTW rates for permanent workplace injuries when compared to other states. California's injured workers are far more likely to be out of work after their injury, and in the long run, the benefits do not compensate for the resulting lower earnings.

#### *Recommendations*

- Continue seeking consensus for the adoption of short-term improvements and continue working toward adoption of long-term improvements in the Stay-at-Work/Return-to-Work (SAW/RTW) process so that economic losses resulting from injuries may be reduced for both employers and employees.
- Consider recommendations from the November 17, 2006 Return-to-Work Roundtable and the 2008 Administrative Director's Return-to-Work Advisory Group, including the following interim changes to the RTW incentives that were adopted in the 2003 and 2004 reforms:
  - Make technical changes regarding the supplemental job displacement benefit (SJDB) and tiered permanent disability (PD) benefit including coordinating the timelines for eligibility determinations and the timing of notices.
  - Explore specific requirements involving seasonal and temporary employment, as well as general and special employment.

## CHSWC RECOMMENDATIONS

- Conduct a comprehensive evaluation of RTW in California with data to support structural changes beyond those which were adopted in the 2003 and 2004 reforms.
- Conduct research and forums to disseminate best practices in disability management.
- Continue to bring key policymakers into the discussion and be an agent of change.

### *Actions*

CHSWC has contracted with RAND to conduct a comprehensive study of the impact of recent RTW and vocational rehabilitation reforms on employer costs and injured worker outcomes.

CHSWC staff conducted an RTW roundtable in November 2006 to discuss the operational and technical aspects of the RTW program. The roundtable involved 30 stakeholders of the workers' compensation system representing insured and self-insured employers, labor, insurance carriers, medical providers, and attorneys. The discussion centered on identifying the current issues with respect to RTW in California, as well as identifying potential solutions.

For further recommendations from the November 2006 roundtable, see CHSWC report, "Summary of November 17, 2006 Return-to-Work Roundtable."

In June 2007, CHSWC participated in a Stay-at-Work/Return-to-Work Northern California Summit, "Preventing Needless Work Disability by Helping People Stay Employed." American College of Occupational and Environmental Medicine (ACOEM) guidelines on the SAW/RTW process were used to launch breakout discussions among employer, labor, insurer and medical provider stakeholders, and other interested participants. (See <http://www.acoem.org/guidelines.aspx?id=566>.)

In 2008, CHSWC continued to participate on the California SAW-RTW Consortium, which was created to continue the work of the Summit. CHSWC supports the disability management definition and goals/objectives of the California SAW-RTW Consortium (See <http://www.saw-rtw-californiasummit.com/>.)

In 2008, together with the Administrative Director (AD) of the Division of Workers' Compensation (DWC), CHSWC engaged in a series of meetings with stakeholders about RTW incentives and benefits, with the goal of developing a consensus for steps to improve California's RTW performance.

As part of its commitment to disability management, CHSWC is collaborating with the International Association of Industrial Accidents Boards and Commissions (IAIABC) to host the International Forum on Disability Management (IFDM) 2010, an event devoted to multinational dialogue on disability management. IFDM in 2010 is expected to bring together over 500 attendees, representing more than 25 countries, from the health, safety, and workers' compensation communities.

## **MEDICAL ISSUES**

Many reform provisions addressed medical and medical-legal issues. These included establishing medical networks, revising fee schedules, using medical treatment utilization guidelines, using a single qualified medical evaluator (QME) or agreed medical evaluator (AME) for medical-legal reports in each case, and requiring medical treatment to be provided while waiting for acceptance or rejection of a claim of occupational injury or illness.

### **Medical Treatment Guidelines**

The AD was required by statute enacted in 2003 to adopt a medical treatment utilization schedule (MTUS) in consultation with CHSWC. With participation by DWC, CHSWC conducted a study by RAND

## CHSWC RECOMMENDATIONS

to evaluate treatment guidelines. As a result of that study and consistent with the subsequent report<sup>1</sup>, CHSWC recommended that the MTUS should be initially based on the ACOEM *Guidelines*, 2<sup>nd</sup> edition, and augmented by additional topic-specific guidelines with continual review and updating. CHSWC also recommended that standards be adopted to determine appropriate treatment in situations where no guidelines are directly applicable. DWC adopted an MTUS on June 15, 2007, based on ACOEM *Guidelines*. DWC also added acupuncture guidelines effective June 15, 2007.

DWC is continuing to augment and update the MTUS. Since August 2008, a DWC rulemaking process has been underway to adopt the updated elbow disorders chapter of ACOEM *Guidelines*, to add chronic pain guidelines and postsurgical treatment guidelines, and to restructure the MTUS.

### *Recommendations*

- Continue to evaluate the effect of the MTUS and identify its gaps or weaknesses so that it may be appropriately augmented and updated.
- Examine quality-management tools that may enhance quality of care and avoid unnecessary care while reducing the need for medical review of individual treatment recommendations.

### **Monitoring Medical Care and Costs**

Issues of the quality of medical care being provided to California's injured workers continue to be raised. These issues include the timely and expedient access to medical care, restraints on unnecessary care, and understanding of medical errors in the provision of care. Studies have shown that the quality of medical care in the United States is not very high and that reporting quality-of-care information, either back to the providers or to consumers, can motivate providers to improve.

### *Recommendations*

- Develop a conceptual framework for monitoring the California workers' compensation medical care system with feedback from stakeholders. The development of a framework would involve specifying the existing measures and data that might be used, as well as identifying where there are critical gaps in the measurement capabilities of the monitoring system.
- Conduct a demonstration project illustrating how quality monitoring might be used in the California workers' compensation system. This would involve testing the feasibility of developing and utilizing overuse and under use utilization criteria in measuring the appropriateness of medical care provided to injured workers.
- Study and review concerns regarding access to QMEs and the quality of QME reporting.
- Continue to evaluate costs, access and quality of medical provider networks (MPNs). Areas for consideration for improving the MPN process include:
  - Allow DWC to approve the medical provider entity instead of requiring each insurance carrier or self-insured employer to file an application to establish a medical provider network (MPN).
  - Provide increased monitoring of quality and access to medical care.
  - Implement an independent audit process to confirm representations made by MPN applicants.
  - Implement a periodic recertification process to assure continued compliance with requirements.
  - Evaluate the impact of the current fee schedule which requires duplicate reimbursement for spinal surgical implant hardware.

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<sup>1</sup> Nuckols, Teryl K, Wynn, et al, Evaluating Medical Treatment Guideline Sets for Injured Workers in California, RAND, 2005.

## CHSWC RECOMMENDATIONS

### *Actions*

CHSWC is conducting an ongoing study of medical reforms.

In addition, CHSWC is partnering with RAND and Zenith Insurance Company on a demonstration project that will suggest a mechanism for monitoring and improving the quality of care provided to injured workers. The goal of the project is to demonstrate quality measurement in a workers' compensation setting and involves the following objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

### **INDEMNITY BENEFITS**

Past reforms made significant changes in indemnity benefit delivery, including temporary disability (TD) and permanent disability (PD) benefits and apportionment of PD.

#### **Permanent Disability Rating Schedule**

PD benefits are meant to compensate workers for their remaining disability after they have reached maximum medical improvement from their injuries. However, a CHSWC study by RAND found that the pre-2005 California Permanent Disability Rating Schedule (PDRS) was procedurally complicated, expensive to administer and inconsistent:

- Earnings losses for similarly rated impairments for different body parts varied dramatically.
- PD ratings varied among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

The AD adopted a PDRS effective January 1, 2005. The PDRS established adjustment factors for diminished future earning capacity (FEC). These FEC factors were applied as multipliers on the impairment ratings that are determined according to the American Medical Association (AMA) *Guides*. The combined effect of changes to PD compensation cut employers' costs for PD by about two-thirds. This reduction was more drastic than expected by many policymakers. While the cost savings may have been welcomed, some contended that the remaining benefits are inadequate or inappropriately distributed.

### *Recommendations*

- Labor and management should continue to discuss opportunities for addressing the inequities in the PDRS. Consideration should be given to altering other components of the PD compensation system besides the appropriate range of FEC factors.
- DWC should periodically repeat its studies of RTW rates and wage loss.
- DWC should conduct a research review meeting, including representatives from CHSWC, the California Workers' Compensation Institute (CWCI), the California Applicants' Attorneys Association (CAAA), the Workers' Compensation Insurance Rating Bureau (WCIRB), and others who can advise refinements of methodology for future DWC research projects.
- Evaluate the 6th edition of the AMA *Guides to the Evaluation of Permanent Impairment* as a potential replacement for the 5th edition in the disability rating process.

## CHSWC RECOMMENDATIONS

### *Actions*

There were several approaches considered for revising the PDRS, including:

- Adjusting FEC factors to reduce inequity in benefits across different injury categories.
- Changing the weekly amount of PD payments or the number of weeks benefits are paid.

On July 21 and 22, 2008, the AD conducted public hearings on a proposal to change the FEC factors from their current range of 1.2 to 1.4 to a new range of 1.2 to 1.5. This proposed change would increase PD costs by 16 percent.

For further information on PD, see the Special Report: Permanent Disability and the Projects and Studies sections of this report.

### **Apportionment**

Apportionment is the process that separates disability attributed to other causes such as pre-existing conditions from disability attributed to an industrial injury or illness. Apportionment applies only to PD, not to TD or medical benefits. Prior to Senate Bill (SB) 899, the disability that could be apportioned was generally the disability that would have existed if there had been no industrial injury. SB 899 permits apportionment “based on causation.” This appears to mean that some disabilities that would not have been apportioned under the old law will be apportioned now if they were caused in part by pre-existing conditions or other non-compensable causes. The statute remains subject to interpretation by the courts. The change may also affect the way a finding of PD is converted into an award of indemnity benefits.

### *Recommendation*

- Continue to evaluate and monitor the apportionment issue: judicial interpretation; impact on litigation; and cost-shifting.

### *Actions*

At the request of CHSWC and WCIRB, the University of California (UC), Berkeley conducted an analysis of PD ratings under the new PD schedule. The analysis compared the average ratings under the 2005 PDRS to comparable groups of ratings under the pre-2005 PDRS.

The extent of apportionment was evaluated for summary-rated claims. Summary ratings are submitted to a judge to determine whether apportionment is appropriate. Consult ratings are not submitted to a judge, and apportionment is generally not considered by the Disability Evaluation Unit (DEU) of DWC. Findings show that:

- 2,909 of 29,580 summary-rated cases (9.8 percent) included apportionment.
- The average percent of the rating apportioned to other cases or causes was 40.1 percent; that is, on average, 59.9 percent was awarded in the current case when any apportionment was applied.
- The impact was to reduce the average rating on all cases by 4.9 percent (about 0.6 rating points).
- Apportionment reduced the average PD award by 5.8 percent.



## CHSWC RECOMMENDATIONS

### ANTI-FRAUD EFFORTS

Insurance fraud is a growing problem in our society, representing over \$15 billion in losses each year in California alone, according to the Department of Insurance (CDI). Most people believe that insurance fraud is a victimless crime that does not affect them. In fact, it is a crime that costs lives and also funds criminal enterprises. Ultimately, fraud contributes to higher premium costs for everyone. Cutting the cost of fraud makes economic sense for California. Nevertheless, fraud is elusive and increasingly difficult to detect as criminals become more sophisticated in their practices.

Ultimately, fraud must be prosecuted in the criminal justice system; however, there are many opportunities to detect potential fraud through various indicators. CHSWC participates in research and activities that identify and measure potential fraud by working closely with the Fraud Assessment Commission (FAC) and CDI to examine the extent of potential fraud in the workers' compensation system and continue to make recommendations.

#### **Insurance Commissioner's Advisory Task Force on Insurance Fraud**

The Insurance Commissioner's Advisory Task Force on Insurance Fraud was convened on May 31, 2007, at the invitation of Insurance Commissioner Steve Poizner. The task force worked for one year and delivered recommendations to Insurance Commissioner Poizner on ways to reduce or eliminate insurance fraud. CHSWC participated in this effort by heading up the workers' compensation aspect of the fraud task force.

##### *Recommendations*

- Support the recommendations of the Insurance Commissioner's Fraud Task Force Report.

##### *Actions*

CHSWC convened meetings with the various key stakeholders of the workers' compensation focus group to develop recommendations regarding workers' compensation fraud detection, prevention and prosecution, which met the specific goals of the task force. The recommendations were submitted to the Insurance Commissioner and several were included in the May 2008 report.

(See <http://www.insurance.ca.gov/0300-fraud/upload/FraudTaskReport05-08.pdf>.)

#### **Workers' Compensation Payroll Reporting by Employers**

The cost of workers' compensation insurance premium is based on the amount of an employer's payroll. By misreporting payroll costs, employers avoid the higher premiums they would incur with full reporting of payroll. Employers can also misreport total payroll or the number of workers in specific high-risk, high-premium occupation classifications by simply reporting them in lower-risk, lower-premium occupations.

##### *Recommendations*

- Focus more FAC funding on premium fraud enforcement.
- Raise the civil and criminal penalties for premium fraud.
- Develop a more systematic approach to detecting premium fraud.
- Convene a roundtable to discuss the best ways to enforce payroll reporting compliance.

## CHSWC RECOMMENDATIONS

### *Actions*

A CHSWC study found that as much as \$100 billion in payroll were under-reported in 2002. A related study on “split class codes” found that 25 percent to 30 percent of low-wage payroll is under-reported or misreported. These types of payroll misreporting lead to insurance premium fraud, if successfully prosecuted.

### **Workers’ Compensation Medical Payment Accuracy**

There is concern that some instances of over-billing of medical payments by providers or under-paying by insurers may be deliberate and not simply due to error. In egregious cases, these seeming errors could be due to fraud, if successfully prosecuted.

### *Recommendations*

Selected recommendations from the study include ways to address a variety of causes of the payment errors identified, as well as ways to more directly identify potential fraud:

- Increase education efforts for providers and insurers about appropriate courses of care per ACOEM Guidelines for the highest-volume types of injuries.
- Analyze the new medical bill database in the Workers’ Compensation Information System (WCIS) using a range of analytic techniques to identify aberrant patterns and trends in workers’ compensation medical billing fraud on a systemwide basis and focus investigative efforts.
- Consider expanding statutory authority for access by CDI to WCIS to measure the extent of potential fraud in the system.
- Conduct a follow-up payment accuracy study in 2010 using the WCIS medical bill database to determine if implementation of any recommendations from this study or others has had an effect on payment accuracy levels.

### *Actions*

CHSWC, working with the FAC, conducted a study that examined areas where medical payments by insurers or billing by medical providers could be in error, if not suspected fraud.

### **Public Access to Workers’ Compensation Insurance Coverage Information**

Among the various labor standards laws, the Division of Labor Standards Enforcement (DLSE) is tasked to inspect suspected employers who do not possess and pay for legally required workers’ compensation insurance coverage.

Estimates of the number of illegally uninsured employers as a whole have varied over the years; however, several computerized approaches are proving to provide reliable quantification, as well as individual identification, of employers who attempt to cheat the system by avoiding payment for coverage. Funding for a data matching program, recently created by SB 869 in 2007 and now in Labor Code Section 90.3, is already proving effective, and annual program reports will be expected to be posted on the DLSE website. Approaches used in other states also prove promising.

## CHSWC RECOMMENDATIONS

### *Recommendations*

- Implement an online public coverage verification database website as soon as feasible.
- Monitor stakeholder concerns about the type of coverage information publicly displayed on the website, such as the effective dates of a policy.
- Help inform stakeholders about the issues of timely updating of information and the accuracy of coverage information provided by WCIRB.

### *Actions*

In response to a request from the Legislature, CHSWC prepared an issue paper regarding public access to workers' compensation insurance coverage information or proof of coverage (POC) in 2006. The CHSWC study looked at various approaches to identify and reduce the illegally uninsured employer population. The study reviewed states that have a public online coverage verification database and found the service promising. Since 2006, CHSWC has been monitoring the adoption of this online service across the country and, as of 2008, there were 29 states with such a website look-up list. In 2008, a bill to establish a basic online (website) coverage information system, Assembly Bill (AB) 507, was vetoed by the Governor. In his veto message, the Governor stated that the website was laudable but that he was "concerned that the website would not be required to post the effective dates of coverage of a policy, thereby significantly diminishing the value of the information. More importantly, the bill does not contain any specified timing in which the information must be updated, potentially leading to inaccurate information on the website." CHSWC will monitor any new legislation related to this subject in the next legislative session.

### **The Accuracy of Workers' Compensation Injury Reporting by Claims Administrators, Employers and Insurers**

Injury reporting is used by state and federal agencies to accurately calculate workers' compensation insurance premiums, as well as to address injury and illness prevention efforts and related inspection activities. A CHSWC study of a large sample of WCIS data and Bureau of Labor Statistics (BLS) data found that 21 percent to 25 percent of lost-time injuries go unreported. Inaccurate injury reporting distorts the insurance premium calculations for employers and distorts systemwide and individual workplace risk assessments. Cost shifts may occur, attention to safety conditions may be misdirected, and policymakers may make misinformed resource decisions about workplace injury and illness prevention.

### *CHSWC Recommendations*

- Convene a task force to develop methods, procedures or incentives to improve injury reporting.
- Periodically monitor the magnitude of under-reporting by claims administrators, employers and insurers that must report to the agencies that collect the data.

Further information about anti-fraud efforts is available in the Special Report: Fraud and in the Projects and Studies sections of this report.

## CHSWC RECOMMENDATIONS

### **Independent Contractors**

According to DLSE, “there is no set definition of the term “independent contractor” and as such, one must look to the interpretations of the courts and enforcement agencies to decide if in a particular situation a worker is an employee or independent contractor. In handling a matter where employment status is an issue, that is, employee or independent contractor, DLSE starts with the presumption that the worker is an employee. (Labor Code Section 3357.) This is a rebuttable presumption, however, and the actual determination of whether a worker is an employee or independent contractor depends upon a number of factors, all of which must be considered, and none of which is controlling by itself. Consequently, it is necessary to closely examine the facts of each service relationship and then apply the law to those facts.” “Since different laws may be involved in a particular situation such as a termination of employment, it is possible that the same individual may be considered an employee for purposes of one law and an independent contractor under another law.”

The vagueness of the definition of independent contractors makes enforcement of labor laws, including workers’ compensation laws, difficult for the Department of Industrial Relations (DIR). According to DLSE, “In recent years, many employers have reclassified their workers as “independent contractors” to avoid the costs of workers’ compensation and overtime pay associated with employment of workers classified as employees. This agency and responsible advisors to business have counseled against this practice. Yet a significant number of consultants and some attorneys have worked at influencing employers to attempt this sizable risky maneuver.”

Governor Schwarzenegger and members of the workers’ compensation community have expressed concerns that existing law governing the difference between an employee and an independent contractor is confusing to employers. Recent legislative approaches have attempted to impose a liability that might make consultants wary of providing services to businesses, leaving these employers without any guidance in an increasing litigious environment. There is an expressed need to focus on addressing the confusion caused by current law, “not punishing those trying to create and grow jobs in California.”

Labor Code Section 3357 does not clear up the definition of independent contractor, and further review of this definition and related licensing programs in California and other states is needed.

#### *CHSWC Recommendations*

- Review the legal definition of independent contractor and its application for the purposes of workers’ compensation, as well as any other related purposes, and propose legislative improvements.
- Review the legal criteria for independent contractor recognition. Consider how the determination of independent contractor status in California workers’ compensation compares to other systems and other jurisdictions.
- Evaluate ways to reduce uncertainty and abuse while preserving a range of legitimate forms of doing business.
- Propose legislative improvements with the goals of preserving the principles of the workers’ compensation system and promoting healthy economic activity in this state.

### **REPORTING FIRST AID CLAIMS**

In violation of law, some employers arrange with medical providers who treat employees’ injuries to withhold the Doctor’s First Report from their insurers in some cases in order to reduce their insurance premiums. This practice raises premiums for employers that do allow the Doctor’s First Report to be sent to their insurers. It can also lead to denial of workers’ compensation benefits to injured workers because of lack of notice to the insurer.

## CHSWC RECOMMENDATIONS

It appears that this practice occurs most frequently with injuries that do not require treatment beyond first aid or time off beyond the employee's work shift at the time of injury (first aid cases). Employers that correctly process first aid cases with their insurers believe that they are paying disproportionate costs due to increased premiums resulting from the fraud committed by other employers, as well as paying generally high costs of administration and overhead with workers' compensation cases.

### *Recommendations*

- Solicit stakeholder input on how to ensure consistent first aid reporting, fair allocation of premium costs among insured employers, and appropriate first aid medical care for injured workers.

### *Action*

CHSWC prepared a First Aid Issue Paper in November 2008. Roundtables to be scheduled in 2009.

## INFORMATION FOR INJURED WORKERS AND EMPLOYERS

Injured workers, employers, and the public need up-to-date and easily accessible information about the workers' compensation system.

### *Recommendations*

- Update informational publications as needed.
- Continue to provide easily accessible and updated information on the CHSWC website.
- Make information available in several languages in addition to English and Spanish, such as Chinese, Vietnamese, Tagalog and Korean.

### *Actions*

CHSWC recently updated and redesigned its website for injured workers and employers and other stakeholders in the workers' compensation system, as part of a Department of Industrial Relations (DIR)-wide redesign.

In 2006, CHSWC released the third edition of "Workers' Compensation in California: A Guidebook for Injured Workers." This guidebook was designed and produced by the Institute of Industrial Relations and the Labor Occupational Health Program (LOHP) of University of California (UC), Berkeley under a contract with CHSWC.

Since the guidebook was published, legislation and regulations have expanded injured workers' rights in certain areas. Recent updates include:

- *Predesignating a Medical Group*, which describes the right of workers who are covered by employer-paid group health to predesignate a medical group if the medical group meets certain criteria.
- *New Law Extends Period for Temporary Disability Payments to Injured Workers*, which describes the right of workers injured on or after January 1, 2008, who are eligible to receive up to 104 weeks of TD benefits, to receive those benefits within five years instead of two years.

## CALIFORNIA INSURANCE INDUSTRY

Unpredictable gyrations in the price of workers' compensation insurance in the past ten years have been troubling for California businesses and have had consequences for workers.

## CHSWC RECOMMENDATIONS

When workers' compensation insurance premiums were deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances below their actual costs. Many insurers drew on their surplus or other sources of capital or relied on investment profits during bull market years. Investment income dropped with the return of a bear market. Between 2000 and 2003, 27 workers' compensation insurers went into liquidation. Subsequently, the surviving insurers charged higher premium rates to meet costs and begin to replenish reserves. A study is underway to obtain a more thorough analysis of the causes of the market instability. The effect on employers, however, was clear. Fewer insurers were available to write insurance, competition was reduced, and prices soared.

The California workers' compensation legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improve the assessment of PD, also had significant impact on insurance costs. As a result of recent workers' compensation legislative reforms and the subsequent decisions by the Insurance Commissioner on advisory premium rates, workers' compensation insurers have reduced their filed rates. At the same time, new insurers began entering into the California workers' compensation market.

### *Recommendations*

- Monitor on an ongoing basis to evaluate whether employers' cost of insurance reflects the insurers' cost of providing benefits to injured workers.
- Conduct an examination of administrative costs in workers' compensation compared to other benefit delivery systems.
- Conduct a study to analyze the reasons for insolvencies that occurred after deregulation in 1995 in order to prevent any similar future trends of insolvencies.

### *Actions*

Assembly Bill (AB) 316, enacted in 2007, mandates CHSWC to conduct this study. CHSWC staff researched insolvencies in preparing a request for proposal, and in June 2008, CHSWC awarded a contract to RAND to conduct the study, which is due in June 2009.

## **WORKERS' COMPENSATION ADMINISTRATION**

DWC administers the workers' compensation system in California. It is responsible for adopting regulations pursuant to delegations of legislative power. DWC is also responsible for enforcement, adjudication, and data collection. CHSWC has collaborated with DWC on numerous studies and projects. In furtherance of DWC's mission to minimize the adverse impact of work-related injuries on California employees and employers, CHSWC recommends strengthening and streamlining DWC's oversight role as follows:

### *Recommendations*

- DWC should resume publishing the promptness of first payment reports on insurance carriers. This was a simple way to motivate carriers to improve their compliance with legal requirements.
- Require electronic filing, rather than paper filing with the DIR Division of Labor Statistics and Research (DLSR), the Employer's Report of Occupational Injury or Illness (DLSR Form 5020) and the Doctor's First Report of Occupational Injury or Illness (DLSR Form 5021). This will save money on paper, postage, and manual processing.
- Change the jurisdiction over the Employer's Report of Occupational Injury or Illness from DLSR to DWC, where it can be integrated with WCIS which already duplicates the data-collection function of the reports to DLSR but in a more efficient system.

## CHSWC RECOMMENDATIONS

- Conduct a review of WCIS to ensure that it captures the relevant data elements for measurement and analysis of the California workers' compensation system. Confining the elements to the IAIABC specification may be limiting the ability to analyze unique features of the California system.
- Develop and adopt penalty regulations for failure to report data to WCIS.
- Conduct a comprehensive review of the statutory requirements for benefit notices to ensure consistency, coordination, streamlining, and improved customer service.

### UNINSURED EMPLOYERS BENEFITS TRUST FUND

All employers in California are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured.

Since not all employers comply with the law to obtain workers' compensation coverage for their employees, the Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. As of 2004, Fund losses previously incurred by the State's General Fund are now incurred by the UEBTF and are now funded by a surcharge on all insured employers and self-insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.

The workers' compensation community has expressed concern with several aspects of UEBTF. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers. Workers, along with the attorneys and medical providers to whom they turn for help, are concerned about the difficulties of obtaining benefits from UEBTF. Chief among those difficulties is the need to accurately identify the employer and serve the employer.

#### *Recommendations*

- Improve methods to help workers access benefits from UEBTF:
  - Develop a simplified guide on the UEBTF claims process for injured workers.
  - Educate Information and Assistance (I&A) Officers on UEBTF procedures to improve access for injured workers.
- Encourage reporting of suspected illegally-uninsured employers:
  - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to CDI on the FD-1 fraud form.
  - Develop a standard form and a "hotline" for whistleblowers to report to DLSE employers who are uninsured or committing other labor law violations.
  - Require UEBTF and the Office of the Director (OD) Legal to create a coordinated tracking system and report suspected uninsured employers to DLSE, CDI and other enforcement agencies.
  - Explore creating a pilot project to establish an advocacy position housed in two I&A offices to assist workers whose employers are illegally uninsured.

## CHSWC RECOMMENDATIONS

### EXPLORING FUTURE DIRECTIONS

#### Integration of Group Health and Workers' Compensation Medical Care

Although recent workers' compensation reforms have decreased medical costs, California's employers still experience higher costs for workers' compensation claim medical care than employers in most other states. Suggestions have been made to integrate workers' compensation medical care with the general medical care provided to patients by group health insurers in order to improve the quality and coordination of care, lower overall medical expenditure, reduce administrative costs, and derive other efficiencies in care. Research also supports the contention that an integrated 24-hour care system could potentially provide medical cost savings, as well as shorten the duration of disability for workers.

Stakeholders commented that the public sector would be the best place to conduct a pilot program of integration.

#### *Recommendations*

- Evaluate the performance and outcomes of the integrated care pilot program currently underway.
- Conduct a detailed feasibility study of implementation of integrated care in the public sector.
- Develop and provide specific details and resources on integrated care for interested unions and employers.

#### *Actions*

The California HealthCare Foundation (CHCF) awarded a grant to CHSWC to develop a proposal to integrate occupational and non-occupational medical treatment, an alternative that could offer savings on medical utilization, unit pricing, and administrative expenses while potentially offering improvements in the quality of health care. As a secondary advantage, the project is expected to expand access to affordable medical insurance.

The Service Employees International Union (SEIU) Local 1877 requested assistance from CHSWC and UC Berkeley with negotiating a collective bargaining agreement that would integrate both occupational and non-occupational medical treatment under the union's Taft-Hartley Health and Welfare Trust. Ultimately, a pilot program integrating occupational and non-occupational care began in February 2008, between a unionized employer, DMS Facility Services, with employees throughout California, and SEIU 1877. The pilot, which is part of a carve-out agreement, uses Kaiser Permanent for delivery of both workers' compensation medical care and group health benefits. The goal of the pilot is to identify areas of administrative savings and ways to reduce litigation.

CHSWC conducted a number of roundtable discussions in 2008. A roundtable was convened by CHSWC, the California Manufacturers & Technology Association (CMTA), the Department of Industrial Relations (DIR) and CHCF to discuss integration of care. A key outcome was the recommendation that the public sector would be the ideal setting for a pilot and that a feasibility study should be done first.

A roundtable was also convened by CHSWC and California Labor Federation (AFL-CIO) and selected interested unions to focus on the opportunities and obstacles to integration. Under existing law, a labor-management carve-out agreement may be the vehicle for integrating occupational and non-occupational health care. A recommendation from the roundtable is to work with unions on providing specific details and resources on carve-outs and integration of occupational and non-occupational medical care.

CHSWC and representatives of the California Applicants' Attorneys Association (CAAA) held a discussion on integration of care. Issues raised included: whether legislative or constitutional changes would be needed; what the role of treatment guidelines and the requirements for record keeping would be under integration; what the process for permanent disability would be; whether there would be medical coverage if an employee changes employer; and whether integration of care models exist in other states.



## CHSWC RECOMMENDATIONS

A public sector working group was held by CHSWC for Executive Branch participants and CalPERS. The next steps from the roundtable were to: provide a cost/benefit analysis of alternatives; review what already has been drafted by the Governor's Office and other parties on integration of care; and obtain figures from the Department of Personnel (DPA) about what the State of California is paying for group health.

A roundtable with group health insurers and employer purchasing coalitions was also held by CHSWC. The next steps from the roundtable were to meet with CalPERS to look at possible pilot solutions; to identify interest on the part of the State; to identify a large self-insured employer to consider integrated care; and to provide more information on the integrated care pilot, when available.

CHSWC is in discussions with the National Academy of Social Insurance (NASI) and CHCF to hold a national forum on integration of care. The purpose of the forum would be to promote dialogue and share insights on ways to improve both quality and efficiency of medical care for ill or injured workers.

### **Carve-Outs**

Carve-outs provide an alternative to the existing procedures within California's workers' compensation system, typically centered on an alternative dispute resolution system and potentially including alternative benefit delivery systems. Carve-outs have the potential to improve safety programs and reduce injury and illness claims, achieve cost savings for employers, provide effective medical delivery and improved quality of medical care, improve collaboration between unions and employers, reduce litigation, and increase the satisfaction of all parties.

#### *Recommendations*

- Evaluate and disseminate best practices of carve-out programs.
- Update the evaluation of the performance of carve-outs.
- Promote carve-outs to the workers' compensation community with identified incentives.
- Explore the feasibility of permitting the State of California to enter into carve-out agreements with unions.
- Establish a panel of union and employer representatives participating in carve-outs to share their experiences with unions and employers that are considering entering into carve-out agreements.

#### *Actions*

CHSWC developed and presented a one-day Workers' Compensation Carve-Out Conference/ Alternative Dispute Resolution (ADR) in Emeryville, CA, in August 2007, to provide information and resources on key issues on carve-outs. Key topics included: the process for establishing a carve-out; benefits of creating a carve-out; existing models of carve-outs and best practices; health and safety prevention in carve-outs – ways to reduce injuries, illnesses and costs, including such topics as health and safety committees and injury and illness prevention training; and the new paradigm in healthcare, integration of workers' compensation and group health.

A labor roundtable on integration of health care in 2008 was held. One of the key recommendations was that a panel of experienced carve-out participants should be organized in which union and employer representatives can share their experiences with unions and employers that are considering carve-outs.

### **Plan for Older Workforce**

The changing demographics of the workforce may require employers to hire older workers. Older adults may need to consider working longer to ensure their financial security.

## CHSWC RECOMMENDATIONS

### *Recommendations*

- Develop a research agenda to address the impact of older workers on the health and safety and workers' compensation systems.
- Develop policies that emphasize health, workplace safety and injury prevention for older workers.
- Develop policies for the workers' compensation system that assist employers and aid older workers.

## **INJURY PREVENTION**

### **Health and Safety Research Agenda**

CHSWC believes that it is important to conduct research that results in both knowledge and policies that will lead to elimination of workplace fatalities and reduction in injuries and make California workplaces and workers the safest, healthiest and most productive in the country.

### *Recommendations*

- Conduct a series of studies to evaluate the effectiveness of the current OSHA program such as:
  - An evaluation of the California standard requiring injury and illness prevention programs.
  - A study to identify whether some OSHA compliance officers are better than others at preventing injuries.
- Conduct a study to evaluate the effectiveness of experience modification rating as a safety incentive in the workplace.
- Conduct a study of safety risks to examine whether brand new firms have greater safety risk than older firms.

### *Actions*

At its August 9, 2007 meeting, the Commission voted to convene a health and safety advisory committee, and on November 19, 2007, CHSWC held a Health and Safety Advisory Committee meeting to develop a health and safety research agenda.

CHSWC issued a report, "Research Agenda for Improving Workplace Health and Safety in California" in February 2008.

### **Occupational Safety and Health for Public Safety Employees**

The media and some public employers have expressed concern regarding disability and retirement package benefits for public safety officers. CHSWC has received a bi-partisan request to conduct a comprehensive study on this issue.

### *Recommendations*

- Improve surveillance of injury data, particularly for injuries to law enforcement and emergency medical personnel.
- Improve monitoring capabilities for departments to help them to identify trends and alter policies more quickly and efficiently.

## CHSWC RECOMMENDATIONS

- Consider the following areas for safety interventions of public safety workers: increased information analysis and sharing; training; strong safety messages from department leadership; and improvements to protective equipment.
- Implement policies to reduce the rate of disability retirement which focus on preventing injuries among older safety employees or taking steps to alleviate the impact of injuries on their ability to work.
- Conduct a more detailed examination of the effectiveness of different interventions to improve the ability to select and implement appropriate programs and reduce injuries.

### *Actions*

A joint study between CHSWC and the National Institute for Occupational Safety and Health (NIOSH) has been completed.

The objective of the study is to assist the Legislature with its goal to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured.

### **Worker Occupational Safety and Health Training and Education Program (WOSHTEP)**

Labor Code Section 6354.7 specifies that CHSWC establish a Worker Occupational Safety and Health Training and Education Program (WOSHTEP). Pursuant to this mandate, CHSWC established WOSHTEP in 2003. WOSHTEP includes: the Worker Occupational Safety and Health (WOSH) Specialist training; the Small Business Resources Program; Young Worker Health and Safety Programs; and Resource Centers in Northern California, the Central Valley, and Southern California.

### *Recommendations*

- Expand outreach and dissemination of the WOSH Specialist curriculum and further develop the network of WOSH Specialists trainers.
- Conduct outreach and dissemination of health and safety materials to small employers through the Small Business Resources Program.
- Continue to provide health and safety information and leadership programs to young workers through the Young Worker Leadership Academy (YWLA).
- Continue to conduct outreach and dissemination of the online Multilingual Health and Safety Resource Guide available on the CHSWC website.
- Further expand WOSHTEP in the Central Valley, San Diego and the Inland Empire.

### *Actions*

CHSWC has continued to provide health and safety training through WOSHTEP to workers and employers in California. CHSWC continues to promote WOSHTEP as a national model through presentations at national and state conferences, as well as through articles written for publications for the health and safety community.

### **Young Workers**

Over the past five years, an average of 48 teens have died each year in the United States as a result of work-related injuries, and an estimated 160,000 are injured severely enough to require treatment in hospital emergency rooms. Studies suggest that youth job-injury rates are higher than those of adults, despite the fact that youths are prohibited from working in the most hazardous occupations.

## CHSWC RECOMMENDATIONS

### *Recommendations*

- Provide ongoing outreach to make health and safety information available to young workers through statewide activities.
- Continue to convene a statewide task force on young worker health and safety, the California Partnership for Young Worker Health and Safety.
- Provide health and safety information and outreach during Safe Jobs for Youth Month in May of each year to young workers, employers, and the community. This public information campaign is administered by CHSWC through the California Partnership for Young Worker Health and Safety and is coordinated by the Labor Occupational Health Program (LOHP) at UC Berkeley.

### *Actions*

CHSWC continues to convene the California Partnership for Young Worker Health and Safety and conduct ongoing statewide outreach providing health and safety information to young workers, employers, and the community. (See <http://www.dir.ca.gov/youngworker/YoungWorkerPartnership.html>.)

### **Schools Injury and Illness Prevention Program**

When school districts and certain other employers are assessed penalties for occupational safety and health violations, they are permitted to apply for a refund after the violation is abated. Labor Code Section 6434 specifies that “funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist schools in establishing effective occupational injury and illness prevention programs.”

CHSWC has recently encumbered penalty monies in order to develop a Schools Injury and Illness Prevention Program (IIPP). This program would allow CHSWC to comply with its mandate in Labor Code Section 6434 by assisting schools or school districts in establishing effective IIPPs by developing and implementing a Schools IIPP model program to help schools statewide to improve their injury and illness prevention practices and resources.

This program will provide schools with access to training and health and safety resources to improve IIPPs and health and safety. Priority will be given to schools or districts with high risk.

### *Recommendations*

- Develop a model program for the State for schools statewide.
- Partner with key stakeholders to develop and implement the model program.

### *Actions*

CHSWC has brought together representatives from school districts, agencies, Homeland Security and labor to discuss and develop a training program for schools with the priority training going to schools or school districts with high incidence rates and a pilot with schools from around the state. The goal is to establish and maintain effective IIPPs pursuant to the Labor Code.

## CHSWC RECOMMENDATIONS

### **Combined Occupational Injury-Reduction Efforts with Health-Promotion Programs**

Occupational health and safety professionals have traditionally focused attention on the control or elimination of work hazards to protect all exposed workers. Health-promotion professionals have often found that improved individual health behaviors can be encouraged in the workplace. There is some evidence that occupational injury and illness prevention programs are more effective in combination with programs that promote overall worker health.

#### *Recommendation*

- Examine the effectiveness of combining occupational injury-reduction efforts with health-promotion “wellness” programs.

#### *Actions*

The Commission voted to convene a roundtable on combined occupational injury-reduction efforts and health-promotion “wellness” programs. The roundtable, held in July 2008, brought together representatives from employers of both large and small businesses, labor, research organizations, and state agencies to begin a dialogue about strategic approaches, both short-term and long-term, to integrating workplace wellness and occupational health and safety programs in California. Attendees were encouraged to share experience with workplace wellness initiatives and programs and how these ideas relate to their own organizations.

## **SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION**

This Special Report outlines the 2008 legislation and regulations on health and safety and workers' compensation.

### **HEALTH AND SAFETY**

#### **Health and Safety Legislation**

The following describes the health and safety bills that were signed into law in 2008.

##### **AB 1389 (Budget Committee)**

**Amends LC §62.5 and §62.9.**

**Occupational Safety and Health Fund (among other amendments and additions)**

**Status: Signed and Chaptered on September 30, 2008.**

Existing law requires that the director of the Department of Industrial Relations (DIR) levy and collect assessments from employers in an amount determined by the director to be sufficient to fund specified workers' compensation programs implemented in the State.

This bill requires that specified revenues received from additional surcharges levied upon employers in the State be deposited into the Occupational Safety and Health Fund, created by this bill, as a special account in the State Treasury, and authorizes the expenditure of monies in the fund by the department, upon appropriation by the Legislature, for purposes of funding the activities of those departments related to the implementation and enforcement of occupational health and safety laws in the State.

Existing law requires the department to enter into an agreement with the Franchise Tax Board that authorizes the collection by the board of delinquent assessments and penalties that are levied against employers for violation of specified labor laws.

This bill also authorizes the collection by the board of delinquent assessments and penalties that are levied against employers for violation of specified occupational safety and health laws.

#### **Health and Safety Regulations**

The regulatory activities of Department of Occupational Safety and Health (DOSH) are outlined below. Formal rulemaking is preceded by a notice, the release of a draft rule and an announcement for a public hearing. This update covers only recent administrative regulations. Regulations in Title 8 of the California Code of Regulations (CCR) can be found online at <http://www.dir.ca.gov/samples/search/query.htm>.

Occupational Safety and Health Standards Board approved standards are at <http://www.dir.ca.gov/OSHSB/apprvd.html>

The latest formal rulemaking updates are available at <http://www.dir.ca.gov/OSHSB/proposedregulations.html>

NOTE: CHSWC does not list all the Standards Board regulations from the past year, rather only any new DOSH administrative regulations. In 2008, there were no changes to Chapter 3.2. California Occupational Safety and Health Regulations, subchapter 2 at [https://www.dir.ca.gov/title8/ch3\\_2sb2.html](https://www.dir.ca.gov/title8/ch3_2sb2.html).

## SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

### WORKERS' COMPENSATION

#### Workers' Compensation Legislation

The following describes the workers' compensation bills that were signed into law in 2008.

##### **AB 1389 (Budget Committee)**

**Amends Section 139.48 of the Labor Code (among other amendments and additions).**

##### **Return-to-Work Program**

**Status: Signed and Chaptered on September 30, 2008.**

Existing law requires the Administrative Director (AD) of the Division of Workers' Compensation (DWC), until January 1, 2009, to establish the Return-to-Work Program to promote the early and sustained return to work of the employee following a work-related injury or illness.

This bill extends the repeal date of those provisions to January 1, 2010.

##### **AB 1874 (Coto)**

**Amends Section 20300 of the Government Code, and amends Section 11770 of the Insurance Code.**

##### **State Compensation Insurance Fund**

**Status: Signed and Chaptered on September 26, 2008.**

Existing law defines the make-up and pay of the State Compensation Insurance Fund (SCIF) Board.

This bill modifies the definitions of the make-up of the SCIF Board. This bill would provide that the Board of Directors is composed of 11 members, 9 of whom shall be appointed by the Governor. The members appointed by the Governor would include one from organized labor and the others would be required to have substantial experience in various positions, as specified. The bill removes the Speaker of the Assembly and the Speaker pro Tempore of the Senate and their designees from membership on the board. This bill provides that each voting member of the board shall be paid an annual compensation of \$50,000, to be automatically adjusted for inflation, as specified, beginning January 1, 2010.

##### **AB 2091 (Fuentes)**

**Amends Section 5307.2 of the Labor Code.**

##### **Annual study: access to pharmacy services**

**Status: Signed and Chaptered by Governor on July 22, 2008.**

Existing law requires the AD of the DWC to contract with an independent consulting firm, as specified, to perform an annual study of access to medical treatment by injured workers and make recommendations to ensure continued access to that treatment.

This bill additionally requires that the study analyze and make recommendations regarding continued access to prescription drugs and pharmacy services by injured workers.

##### **AB 2181 (Ruskin)**

**Amends Sections 6409.1 and 6410 of the Labor Code.**

##### **Reports of occupational injury or illness**

**Status: Signed and Chaptered on September 30, 2008.**

Existing law requires an employer to file a complete report of every occupational injury or occupational illness, as defined, to each employee that results in lost time beyond the date of the injury or illness, or that requires medical treatment beyond first aid, with the department, through its Division of Labor Statistics and Research (DLSR) or, if an insured employer, with the insurer, on a form prescribed for that purpose by DLSR.

## SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

This bill, instead, requires an insured employer to file the report with the insurer on a form prescribed by the AD of the DWC. This bill requires a self-insured employer, the State, or the insurer of an insured employer to file the report in an electronic form prescribed for that purpose by the AD.

### **AB 2754 (Bass)**

**Amends Section 31720.7 of the Government Code, and Amends Section 3212.8 of the Labor Code. Public Safety Personnel: MRSA Skin Infections**

**Status: Signed and Chaptered on September 30, 2008.**

Existing law establishes a presumption that if certain safety members, firefighters, county probation officers, or members in active law enforcement who have completed 5 years of service under specified pension or retirement systems develop a blood-borne infectious disease, the disease arises out of, and in the course of, employment. Existing law extends this presumption to blood-borne infectious diseases that occur within 3 calendar months after termination for each year of service, up to 60 months. Existing law requires those who are permanently incapacitated for the performance of duty as a result of a blood-borne infectious disease to receive a service-connected disability retirement.

This bill expands the scope of this provision to include any methicillin-resistant staphylococcus aureus (MRSA) skin infection. The bill makes the MRSA presumption applicable for up to 90 days after termination of service, and also makes the presumption applicable to any of the above safety members, regardless of service under the pension or retirement systems.

### **SB 1145 (Machado)**

**Amends Sections 6254, 11121.1, and 11126 of the Government Code, Amends Sections 11785 and 11873 of Insurance Code, and repeals Section 11770.5 of the Insurance Code.**

**State Compensation Insurance Fund Directors**

**Status: Signed and Chapter on September 26, 2008.**

Existing law establishes the Bagley-Keene Open Meeting Act, which generally provides for open meetings of state bodies, and the California Public Records Act, which generally requires that government records be available for inspection by the public, with specified exceptions. Other provisions of existing law exempt the board of directors of the Fund from the application of the two acts.

This bill repeals those exemptions, would specify that both the Bagley-Keene Open Meeting Act and the California Public Records Act apply to the Fund, and would make conforming changes.

This bill provides that the board of directors shall appoint a president, a chief financial officer, a chief operating officer, a chief information technology officer, a chief investment officer, a chief risk officer, and a general counsel. It provides that the board of directors shall set the salary for each position.

### **SB 1467 (Machado)**

**Adds Section 1063.17 to the Insurance Code.**

**California Guaranty Insurance Association (CIGA) open meetings/insolvency.**

**Status: Signed and Chaptered on September 27, 2008.**

Existing law establishes the California Insurance Guarantee Association (CIGA) to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies.

This bill provides that all meetings of the board of governors of the association and its investment and audit committees shall be open and public and all persons shall be permitted to attend, as specified. The bill provides for closed meetings under specified circumstances. The bill also defines the commissioner's role in the meetings of the association.



## SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

### **SB 1271 (Cedillo)**

**Amends Section 3212.1 of the Labor Code, relating to workers' compensation.**

**Cancer presumption: firefighters and fire and rescue services coordinators**

**Status: Signed and Chaptered on September 30, 2008.**

Existing law provides that in the case of active firefighting members of certain state and local fire departments and in the case of certain peace officers, a compensable injury includes cancer that develops or manifests itself during the period when the firefighter or peace officer demonstrates that he or she was exposed, while in the service of the public agency, to a known carcinogen, as defined, and the carcinogen is reasonably linked to the disabling cancer.

This bill extends the application of these provisions to active firefighting members of a fire department who serve a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters and to fire and rescue services coordinators, as defined, who work for the Office of Emergency Services.

### **OTHER LEGISLATION**

### **SB 610 (Corbett)**

**Amends Section 804 of the Penal Code, relating to criminal proceedings.**

**Criminal proceedings: commencement**

**Status: Signed and Chaptered on July 10, 2008.**

Existing law provides that prosecution for an offense is commenced when any of certain things occurs, including when a complaint charging a felony is filed or a case is certified to the Superior Court.

This bill would instead provide that a prosecution for a felony offense is commenced when the defendant is arraigned on a complaint that charges the defendant with a felony. (This bill is not exclusively related to workers' compensation or health and safety felony charges. It is mentioned, in particular, for its potential impact on workers' compensation fraud prosecutions.)

### **Workers' Compensation Regulations**

The regulatory activities of the Division of Workers' Compensation (DWC) to implement the provisions of the recent workers' compensation reform legislation are outlined below. Formal rulemaking is often preceded by the release of a draft rule and the opening of an online forum for interested parties to post comments. This update covers only recent regulations. Older regulations can be found in previous Commission on Health and Safety and Workers' Compensation (CHSWC) annual reports which are available online at <http://www.dir.ca.gov/chswc>.

Information about these preliminary activities is available at <http://www.dir.ca.gov/Wcjudicial.htm>.

The latest formal rulemaking updates are available at [www.dir.ca.gov/DWC/DWCrulemaking.html](http://www.dir.ca.gov/DWC/DWCrulemaking.html).

# SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

## Assembly Bill 1073

AB 1073 Mandates/Tasks	Status of Regulations
<p><b>Labor Code Sections (LC§§) 5307.27, 4604.5</b></p> <p><b>Medical Treatment Utilization Schedule – Postsurgical Treatment Guidelines</b></p>	<p><b>Status: Regulations in process.</b> Public hearings were held on August 11 and 12, 2008. Revisions will be issued for a 15-day comment period in November 2008. <i>Title 8, California Code of Regulations (8 CCR) Section 9792.24.3</i></p> <p><a href="http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm">http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm</a></p> <p>The proposed postsurgical treatment guidelines provide that the 24-visit cap on physical medicine services shall not apply to visits for postsurgical physical medicine and rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director.</p> <p>The proposed postsurgical treatment guidelines define key terms commonly used in the regulations, address the application of the postsurgical treatment guidelines, address postsurgical patient management, set forth the postsurgical patient treatment approach and describe the indications, frequency and duration of postsurgical treatment.</p>

## Senate Bill 899

SB 899 Mandates/Tasks	Status of Regulations
<p><b>LC §4062.1</b></p> <p><b>Qualified Medical Evaluator Procedures for Unrepresented Workers</b></p>	<p><b>Status: Regulations in process. 1<sup>st</sup> 15-day comment period ended July 10, 2008. 2nd 15-day comment period ended November 6, 2008. The regulations will be filed with OAL on November 25, 2008. An effective date of February 15, 2009, is requested.</b></p> <p>Qualified Medical Evaluator (QME) Forms 105 (Request for QME Panel – Unrepresented) and 106 (Request for QME Panel – Represented) and the Attachments to Form 105 (How to Request a QME if You Do Not Have an Attorney) and to Form 106 (How to Request a QME in a Represented Case) are completely revised so the text format is now presented as it will appear in its final format if no further changes are made.</p> <p>Newly proposed QME Form 121 (Declaration Regarding Protection of Mental Health Record) and QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report) are shown in the proposed final format.</p>

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SB 899 Mandates/Tasks	Status of Regulations
<p><b>LC §4062.2</b></p> <p><b>Qualified Medical Evaluator Procedures for Represented Injured Workers</b></p>	<p><b>Status: Regulations in process. 1st 15-day comment period ended July 10, 2008. 2nd 15-day comment period ended November 6, 2008. The regulations will be filed with OAL on November 25, 2008. An effective date of February 15, 2009, is requested.</b></p> <p>QME Forms 105 (Request for QME Panel – Unrepresented) and 106 (Request for QME Panel – Represented) and the Attachments to Form 105 (How to Request a QME if You Do Not Have an Attorney) and to Form 106 (How to Request a QME in a Represented Case) are completely revised so the text format is now presented as it will appear in its final format if no further changes are made.</p> <p>Newly proposed QME Forms 121 (Declaration Regarding Protection of Mental Health Record) and QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report) are shown in the proposed final format.</p>
<p><b>LC §4600</b></p> <p><b>Pre-Designation of Physician</b></p> <p><i>Sunsets:</i> December 31, 2009</p>	<p><b>Status: Regulations completed. Effective March 14, 2006, and revised February 21, 2007, to comply with 2007 amendment to Labor Code §4600.</b></p> <p><a href="http://www.dir.ca.gov/DWC/DWCPropRegs/predesignation_Regulations/Predesignation_regulations.htm">http://www.dir.ca.gov/DWC/DWCPropRegs/predesignation_Regulations/Predesignation_regulations.htm</a></p> <p><i>8 CCR Sections 9780 through 9783.1</i></p> <p>An employee may pre-designate his or her personal physician if the employee notifies the employer prior to the date of injury that he or she has a personal physician and if the employer offers non-occupational group health coverage.</p> <p>If the worker fails to properly pre-designate a personal physician prior to injury, he or she will not be able to do so after the injury occurs.</p> <p>If an injured worker does not properly pre-designate his or her personal physician, the employer will have the control over the employee's medical treatment for the first 30 days from the date the injury is reported.</p> <p>Alternatively, if the employee whose employer has a medical provider network (MPN) fails to properly designate his or her personal physician, the employee will be required to get treatment within the MPN for the course of the injury.</p> <p>If the employee has properly pre-designated a personal physician, referrals made by that physician need not be within an MPN.</p>

SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p><b>LC §4616</b></p> <p><b>Medical Provider Networks</b></p>	<p><b>Status: Regulations completed. Emergency regulations effective November 1, 2004. Permanent regulations effective September 15, 2005.</b> <a href="http://www.dir.ca.gov/dwc/dwcpropregs/MPNReg.htm">http://www.dir.ca.gov/dwc/dwcpropregs/MPNReg.htm</a></p> <p><i>8 CCR Sections 9767.1 et seq.</i></p> <p>Regulations specify the requirements for a medical provider network (MPN), the MPN application process, access standards, the second- and third-opinion process, the procedure to modify an MPN, the process to transfer ongoing care into and within the MPN, the employer-notification requirements, and the procedures concerning the denial of an MPN plan or the suspension or revocation of an MPN plan.</p> <p><b>Effective April 9, 2008:</b></p> <p>A new definition of the term “Cessation of use” was added as subdivision (a)(2). The added definition states that: “Cessation of use” means the discontinued use of an implemented MPN that continues to do business.</p> <p>A new definition of the term “Termination” was added as subdivision (a)(25). The added definition states that the term “Termination” means the discontinued use of an implemented MPN that ceases to do business.</p> <p>The other subdivisions were re-lettered to accommodate these additions. These amendments were necessary to provide definitions for the regulated public and to differentiate between the terms “cessation of use” and “termination.”</p>

SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p><b>LC §4660</b></p> <p><b>Permanent Disability Rating Schedule Revision</b></p>	<p><b>Status: Revised regulations in progress. Public hearings on 7/21/08 and 7/22/08.</b></p> <p><b>Status: Regulations Completed. Emergency regulations effective January 1, 2005. Permanent regulations effective June 10, 2005.</b>  <a href="http://www.dir.ca.gov/dwc/dwcpropregs/PDRSRegs.htm">http://www.dir.ca.gov/dwc/dwcpropregs/PDRSRegs.htm</a></p> <p><i>8 CCR Section 9725 et seq.</i></p> <p>The Permanent Disability Rating Schedule (PDRS) adopts and incorporates the American Medical Association (AMA) <i>Guides to the Evaluation of Permanent Impairment, 5th Edition</i>. The PDRS includes multipliers ranging from 1.1 to 1.4, depending on type of injury, to adjust AMA impairment to reflect diminished future earning capacity.</p> <p>The PDRS is effective for dates of injury on or after January 1, 2005, and for dates of injury prior to January 1, 2005, in accordance with subdivision (d) of Labor Code §4660.</p> <p>The PDRS shall be amended at least once every five years.</p> <p>The Administrative Director (AD) shall (1) collect 2005 PDRS ratings for 18 months, (2) evaluate the data to determine the aggregate effect of the diminished future earning capacity adjustment on the permanent partial disability ratings under the 2005 PDRS, and (3) revise, if necessary, the diminished future earning capacity adjustment to reflect consideration of an employee's diminished future earning capacity for injuries based on the data collected.</p>
<p><b>LC §4660</b></p> <p><b>Permanent Disability Rating Schedule Revision (continued)</b></p>	<p><b>Effective May 2008: Regulations in process.</b></p> <p>Notice of Rulemaking issued and public hearings were held on July 21 and 22, 2008. Following adoption of the 2005 PDRS, DWC gathered 18 months of data on return to work and wage loss and conducted a comprehensive study. The rulemaking proposes to amend the current future earning capacity adjustment and the current age adjustment in the PDRS to reflect empirical data on wage loss.</p>

SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

SB 899 Mandates/Tasks	Status of Regulations
<p><b>LC §5814.6</b></p> <p><b>Penalty for Business Practice of Unreasonable Delay in Payment of Compensation</b></p>	<p><b>Status: Regulations completed. Final regulations effective May 26, 2007.</b></p> <p><a href="http://www.dir.ca.gov/DWC/DWCPropRegs/AdminPenalties_LC5814_6Regulations/LC5814_6Regulations.htm">http://www.dir.ca.gov/DWC/DWCPropRegs/AdminPenalties_LC5814_6Regulations/LC5814_6Regulations.htm</a></p> <p><i>8 CCR Sections 10225 – 10225.2</i></p> <p>Penalties are specified for the following particular violations of Labor Code §5814:</p> <ol style="list-style-type: none"> <li>1. \$100,000 for a finding of knowing violation with a frequency indicating a general business practice;</li> <li>2. \$30,000 for each finding by a workers' compensation judge of failure to comply with an existing award;</li> <li>3. \$5,000 to \$15,000, depending on duration, for delay in payment of temporary disability benefits;</li> <li>4. \$1,000 to \$15,000, depending on severity, for each penalty award by a workers' compensation judge for unreasonably denying authorization for treatment or failing to reimburse an employee for self-procured treatment;</li> <li>5. \$2,500 for each penalty award by a workers' compensation judge for failure to provide a notice or training voucher regarding a supplemental job displacement benefit (SJDB) in a timely manner;</li> <li>6. \$2,500 for each penalty award by a workers' compensation judge for failure to reimburse an injured worker for supplemental job displacement services, or where a failure to pay the training provided results in an interruption of training;</li> <li>7. \$1,000 to \$15,000, depending on duration, for each penalty award by a workers' compensation judge for failure to make timely payment of permanent disability benefits;</li> <li>8. \$2,500 for each penalty award by a workers' compensation judge for any other violation of Labor Code §5814.</li> </ol>
<p><b>LC §5814.6</b></p> <p><b>Penalty for Business Practice of Unreasonable Delay in Payment of Compensation</b></p> <p>(continued)</p>	<p>The AD may charge penalties under both Labor Code §129.5 (including failure to pay undisputed portion of indemnity or medical treatment) and §5814 (unreasonable delay in payment of compensation); however, only one penalty may be imposed following the hearing on such charges.</p> <p>The AD may mitigate a penalty based on consideration of specified equitable factors. Each administrative penalty shall be doubled upon a second finding and tripled upon a third finding under Labor Code §5814.6 within a five-year period.</p>

SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

**Assembly Bill 227 and Senate Bill 228 – Official Medical Fee Schedule**

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
<p><b>LC §5307.1</b> <b>Physician Fee Schedule</b></p> <p>Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent.</p> <p>As of January 1, 2006, the AD will have the authority to adopt an OMFS for physician services.</p>	<p><b>Status: Regulations revised effective February 15, 2007.</b></p> <p><a href="http://www.dir.ca.gov/DWC/OMFS9904.htm">http://www.dir.ca.gov/DWC/OMFS9904.htm</a></p> <p><i>8 CCR Section 9789.11</i></p> <p>For physician services rendered on or after January 1, 2004, the maximum allowable reimbursement amount set forth in the OMFS 2003 is reduced by five (5) percent, except that the reimbursement will not fall below the Medicare rate.</p> <p>The AD has not yet adopted the Medicare-based schedule for physicians. On October 1, 2007, pursuant to contract, the Lewin Group began preparing its study regarding recommendations for a physician fee schedule. After the consultant's report is completed, the division will draft regulations.</p>
<p><b>LC §5307.1</b> <b>Pharmacy Fee Schedule</b></p> <p>AD to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.</p>	<p><b>Status: Regulations complete. Effective March 1, 2007.</b></p> <p><a href="http://www.dir.ca.gov/DWC/OMFS9904.htm">http://www.dir.ca.gov/DWC/OMFS9904.htm</a></p> <p><i>8 CCR Section 9789.40</i></p> <p>Regulation reflects the statutory mandate that pharmacy services rendered on or after January 1, 2004, must be paid at 100 percent of the current Medi-Cal rates.</p>
<p><b>LC §5307.1</b> <b>Official Medical Fee Schedule Shall Be</b></p> <p>Adjusted to conform to relevant Medicare/Medi-Cal changes within 60 days of changes (except specified inpatient changes)</p>	<p><b>Status: Statutes specify that changes can be implemented without regulations.</b></p> <p>Updates to Medicare and Medi-Cal changes are implementeted by an "Order of the Administrative Director of the Division of Workers' Compensation."</p> <p>Update orders issue periodically as needed. The most recent orders issued are as follows:</p> <ul style="list-style-type: none"> <li>• Inpatient – update to conform to Medicare changes was adopted by Order, effective December 1, 2008.</li> <li>• Outpatient – update to conform to Medicare changes was adopted by Order, effective March 1, 2008.</li> <li>• Ambulance fees – update to conform to Medicare changes was adopted by Order, effective April 7, 2008.</li> <li>• Pathology and Clinical Laboratory – update to conform to Medicare changes was adopted by Order, effective January 1, 2008.</li> </ul>

# SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

AB 227 & SB 228 OMFS Mandates/Tasks	Status of Regulations
<p><b>LC §5307.1</b> (continued)</p> <p><b>Official Medical Fee Schedule Shall Be</b></p> <p>Adjusted to conform to relevant Medicare/Medi-Cal changes within 60 days of changes (except specified inpatient changes)</p>	<ul style="list-style-type: none"> <li>• Durable Medical Equipment, Orthotics, Prosthetics and Supplies (DMEPOS) – update to conform to Medicare changes was adopted by Order, effective July 7, 2008.</li> </ul> <p><a href="http://www.dir.ca.gov/DWC/OMFS9904.htm">http://www.dir.ca.gov/DWC/OMFS9904.htm</a></p>
<p><b>LC §5307.1</b></p> <p><b>Specified Schedules (Not in Fee Schedule until January 1, 2005)</b></p> <p>(Skilled nursing facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)</p>	<p><b>Status: In process.</b></p> <p>Expect to move forward on these in 2009. DWC is in the process of prioritizing the work.</p>



# SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

## Other Mandates of Assembly Bill 227 and Senate Bill 228

AB 227 & SB 228 Other Mandates/Tasks	Status of Regulations
<p><b>LC §4603.4</b></p> <p><b>Electronic Bill Payment Regulations</b></p> <p>Regulations are required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.</p>	<p><b>Status: In process.</b></p> <p>Pre-rulemaking advisory committee meetings have been held from June 2004 to the present. A draft of the regulations was posted on the DWC forum from August 10 to September 10, 2007. Notice of Rulemaking will be issued in March 2009.</p> <p>Proposed regulations will require standardized forms for medical bills and will require claims administrators to accept electronic claims for payment of medical services.</p>
<p><b>LC §4610.1</b></p> <p><b>Utilization Review Enforcement</b></p>	<p><b>Status: Regulations completed. Final regulations effective June 7, 2007.</b></p> <p><a href="http://www.dir.ca.gov/DWC/DWCPropRegs/UREnforcementRegulations/UR_EnforcementRegulations.htm">http://www.dir.ca.gov/DWC/DWCPropRegs/UREnforcementRegulations/UR_EnforcementRegulations.htm</a></p> <p><i>8 CCR Sections 9792.11 – 9792.15</i></p> <p>Regulations provide for:</p> <ul style="list-style-type: none"> <li>• Investigations of the utilization review process.</li> <li>• A series of penalties on claims administrators from \$50.00-\$50,000 for failure to have a utilization review plan or provide treatment according to the regulations.</li> <li>• Procedures include Notice of Administrative Penalty Assessment, Appeal Hearing, and Review Procedure.</li> </ul>
<p><b>LC §5318</b></p> <p><b>Spinal Surgery Implantables/Hardware Reimbursement</b></p> <p>Statute codified old regulation providing extra payment for hardware/implantables until AD adopts reimbursement regulation.</p>	<p><b>Status: In process.</b></p> <p>DWC is seeking assistance from RAND to develop possible approaches to refine reimbursement methodology.</p>

SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

<b>AB 227 &amp; SB 228 Other Mandates/Tasks</b>	<b>Status of Regulations</b>
<p><b>LC §5307.27</b></p> <p><b>Medical Treatment Utilization Schedule</b></p>	<p><b>Status:</b> Regulations completed. Final regulations effective June 15, 2007.</p> <p><a href="http://www.dir.ca.gov/DWC/DWCPropRegs/MedicalTreatmentUtilizationSchedule/MTUS_regulations.htm">http://www.dir.ca.gov/DWC/DWCPropRegs/MedicalTreatmentUtilizationSchedule/MTUS_regulations.htm</a></p> <p><i>8 CCR Sections 9792.20 – 9792.23</i></p> <p>The American College of Occupational and Environmental Medicine's (ACOEM) <i>Practice Guidelines, Second Edition</i> (2004), are presumed correct for both treatment and diagnostic services addressed in those guidelines, both for acute and for chronic conditions. For conditions and injuries not addressed by ACOEM Practice Guidelines, treatment shall be in accordance with other scientifically and evidence-based treatment guidelines that are generally recognized by the national medical community. Key terms are defined.</p> <p>A hierarchy of evidence is established to govern circumstances not covered by ACOEM <i>Practice Guidelines</i>, variances from the guidelines, and conflicts between other guidelines. The hierarchy ranges from strong to moderate to limited research-based evidence, with a minimum of one randomized controlled study to constitute limited research-based evidence.</p> <p>Treatment shall not be denied on the sole basis that the condition or injury is not addressed by the ACOEM <i>Practice Guidelines</i>. In this situation, the claims administrator shall authorize treatment if such treatment is in accordance with other scientifically and evidence-based medical treatment guidelines that are generally recognized by the national medical community.</p> <p>A Medical Evidence Evaluation Advisory Committee is established and its composition is specified.</p> <p><b>Status of Follow-up Regulations: Regulations in process.</b> Public hearings held on August 11 and 12, 2008. Revisions issued for a 15-day comment period in November 2008.</p> <p><a href="http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm">http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_Regulations.htm</a></p> <p>DWC has proposed updates to the Medical Treatment Utilization Schedule (MTUS). The MTUS update, which includes new chronic pain and elbow guidelines, was previously posted to an online forum for review and public comment. This rulemaking action is combined with the postsurgical treatment guidelines rulemaking to carry out AB 1073.</p>

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**Assembly Bill 749**

<b>AB 749</b> <b>Other Mandates/Tasks</b>	<b><i>Status of Regulations</i></b>
<b>LC §138.4</b> <b>Benefit Notices to Employees from Claims Administrators</b> Regulations are revised to reflect changes in this statute.	<b><i>Status: Regulations completed. Effective April 9, 2008.</i></b> <a href="http://www.dir.ca.gov/dwc/DWCPropRegs/BenefitNoticeRegulations/BenefitNotice_regulations.htm">http://www.dir.ca.gov/dwc/DWCPropRegs/BenefitNoticeRegulations/BenefitNotice_regulations.htm</a> <i>8 CCR Sections 9767.16, 9810, 9811, 9812, 9813, 9813.1, and 9813.2</i> Updates notices dealing with payment, nonpayment, or delay in payment of temporary disability, permanent disability, return to work and the provision of vocational rehabilitation services, notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation, and an accounting of benefits paid.
<b>LC §§139.48 and 139.49</b> <b>Return-to-Work Reimbursement Program/Study</b>	<b><i>Status: In Process.</i></b>
<b>LC §3822</b> <b>Fraud Notice</b> (Annually to every employer, claims adjuster, third-party administrator, physician and attorney participating in workers' compensation)	<b><i>Status: Completed for 2007.</i></b>
<b>LC §4062.9</b> <b>Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors</b>	<b><i>Status: Project in process.</i></b> DWC is in the process of developing an internet-based series of educational materials for treating physicians and qualified medical evaluators.
<b>LC §4600.2</b> <b>Pharmacy Contract Standards</b>	<b><i>Status: In process.</i></b> DWC contracted with the University of California, San Francisco (UCSF) Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March 2004. Ruelmaking will commence in 2009.

## SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

<b>LC §4603.4</b> <b>Electronic Bill Payment Regulations</b>	<p>Pre-rulemaking advisory committees have been ongoing. A draft of the regulations was posted on the DWC forum from August 10 to September 10, 2007. Notice of Rulemaking will be issued in March 2009.</p>
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### *Other Regulations*

Other Mandates/Tasks	Status of Regulations
<b>LC §138.6</b> <b>Workers' Compensation Information System</b> <p>Implementation of the Workers' Compensation Information System (WCIS) mandated medical treatment and payment data collection.</p>	<p><b>Status:</b> Regulations became effective April 21, 2006. Proposed updated regulations posted to the DWC online Forum late 2007. Preparing to issue formal rulemaking documents.</p> <p>The proposed Regulations update the two WCIS implementation guides, refine the list of required data elements, and establish reporting procedures for medical bills paid by a lump sum following the filing of a lien with the Workers' Compensation Appeals Board (WCAB).</p>
<b>LC §138.6 (continued)</b> <b>Workers' Compensation Information System</b>	<p><b>Status:</b> Regulations provide that medical bill payment data reporting became mandatory on September 22, 2006.</p> <p>To implement the Legislature's amendment of Labor Code §138.7, the regulations allow access to this information by researchers employed or under contract to CHSWC.</p>
<b>LC §§129, 129.5</b> <b>Audit Program Regulations</b>	<p><b>Status:</b> Revised regulations in process. Draft regulations were posted on the DWC forum through November 13, 2007. Public hearing scheduled for December 15, 2008.</p>
<b>LC §123.6</b> <b>Ethical Standards for Workers' Compensation Administrative Law Judges</b>	<p><b>Status:</b> Regulations became effective September 24, 2008. Regulations are pending with the Office of Administrative Law for final approval.</p> <p><i>8 CCR §§9720.1 et seq.</i></p>
<b>LC §§133, 4603.5, 5307.3, 5307.4</b> <b>Americans with Disabilities Act – Access to DWC District Offices. New sections.</b>	<p><b>Status:</b> The proposed regulations were posted on the DWC forum from July 13 to July 23, 2007. Notice of rulemaking will be issued in 2009.</p>
<b>LC §§127.5, 5300, 5307</b> <b>WCAB/DWC District Offices Regulations and Forms</b>	<p><b>Status:</b> Regulations became effective November 17, 2008.</p> <p><i>8 CCR §§ 10210 et seq.</i></p> <p><a href="http://www.dir.ca.gov/dwc/DWCPropRegs/EAMS_regulations/EAMS_regulations.htm">http://www.dir.ca.gov/dwc/DWCPropRegs/EAMS_regulations/EAMS_regulations.htm</a></p>

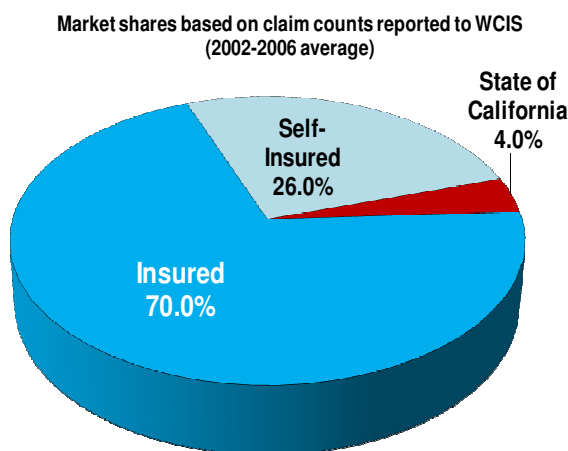
SPECIAL REPORT: 2008 LEGISLATION AND REGULATIONS

Other Mandates/Tasks	Status of Regulations
<p>LC §§4061.5, 4603.4, and 4610 PR-2 Form - Primary Treating Physician's Progress Report, Functional Improvement Report, Request for Authorization Form</p>	<p><b>Status:</b> Regulations in process. Draft regulations were posted on the DWC forum through May 18, 2008. Formal rulemaking will commence shortly.</p> <p><i>8 CCR Sections 9785, 9785.2</i></p>
<p>LC §127 Fees for Copies of Documents</p>	<p><b>Status:</b> Revisions anticipated in 2009.</p> <p><i>8 CCR Section 9990</i></p>
<p>LC §4659 Commutation Tables for Permanent Disability</p>	<p><b>Status:</b> Need to hire actuary.</p> <p><i>8 CCR §§ 10169, 10169.1</i></p>

## SYSTEM COSTS AND BENEFITS OVERVIEW

The California workers' compensation system covers 15,256,000 employees working for over 800,000 employers<sup>i</sup> in the State. These employees and employers generated a gross domestic product of \$1,812,968,000,000 (\$1.8 trillion) for 2007.<sup>ii</sup> A total of 644,700 occupational injuries and illnesses were reported for 2007,<sup>iii</sup> ranging from minor medical treatment cases up to catastrophic injuries and deaths. The total cost to employers for workers' compensation in 2007 was \$17.6 billion. (See textbox on the next page.)

Employers range from small businesses with just one or two employees to multinational corporations doing business in the State and the State government itself. Every employer in California must secure its liability for payment of compensation, either by obtaining insurance from an insurer licensed by the Department of Insurance (CDI) or by obtaining a certificate of consent to self-insure from the Department of Industrial Relations (DIR). The only lawful exception is the State, which is legally uninsured. Based on the 2006 claim counts reported to the Workers' Compensation Information System (WCIS) (see the chart below), 70 percent of injuries occur to employees of insured employers, 26 percent of injuries occur to employees of self-insured employers, and 4 percent of injuries occur to employees of the State of California.<sup>iv</sup>



Data Source: DWC - WCIS

### A New Claim Counts-based Estimate of Workers' Compensation System Size

Measurements of the California workers' compensation system have long been plagued by incomplete data. The Workers' Compensation Insurance Rating Bureau (WCIRB) collects detailed data from insurers to enable the Insurance Commissioner and the companies to determine reasonable prices for coverage. These data are also used for many measurements of the system. Comparable data are not collected on self-insured employers, so researchers relied on estimates. It was estimated that 20% of the market was self-insured, so systemwide measurements were often obtained by multiplying the WCIRB figures by 1.25.

It is now possible to improve that estimate by using Workers' Compensation Information System (WCIS) data on the number of claims filed by employees of insured employers, self-insured employers, and the legally uninsured state agencies. The claims are:

- 70% with insured employers
- 26% with self-insured employers
- 4% with the State as the employer

Assuming that other characteristics are proportional to the number of claims, the new multiplier to estimate systemwide performance based on insurer data is:

$$\frac{100\%}{70\%} = 1.43$$

For example, if insurers' paid losses and expenses are \$10.7 billion, then the systemwide paid losses and expenses are estimated as

$$\$10.7 \text{ billion} \times 1.43 = \$15.3 \text{ billion.}$$

The Commission on Health and Safety and Workers' Compensation (CHSWC) recently obtained WCIS data and began using the new method for estimating system size. This method produces a larger estimate than the old method. Comparisons to previous years must be recalculated using the new method for consistency.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### A New Claim Counts-based Estimate of Workers' Compensation System Size (Million \$)

	<i><b>Insured</b></i>	<i><b>Self-Insured and the State*</b></i>	<i><b>All Employers</b></i>
Indemnity*	\$3,169	\$1,363	\$4,532
Medical*	\$3,766	\$1,619	\$5,385
Changes to Total Reserves	\$269	\$116	\$385
Insurer Pre-Tax Underwriting Profit/Loss	\$1,976	X	\$1,976
Expenses**	\$4,245	\$1,078	\$5,323
<b>TOTAL for 2007</b>	<b>\$13,425</b>	<b>\$4,175</b>	<b>\$17,601</b>

\*Include CIGA payments

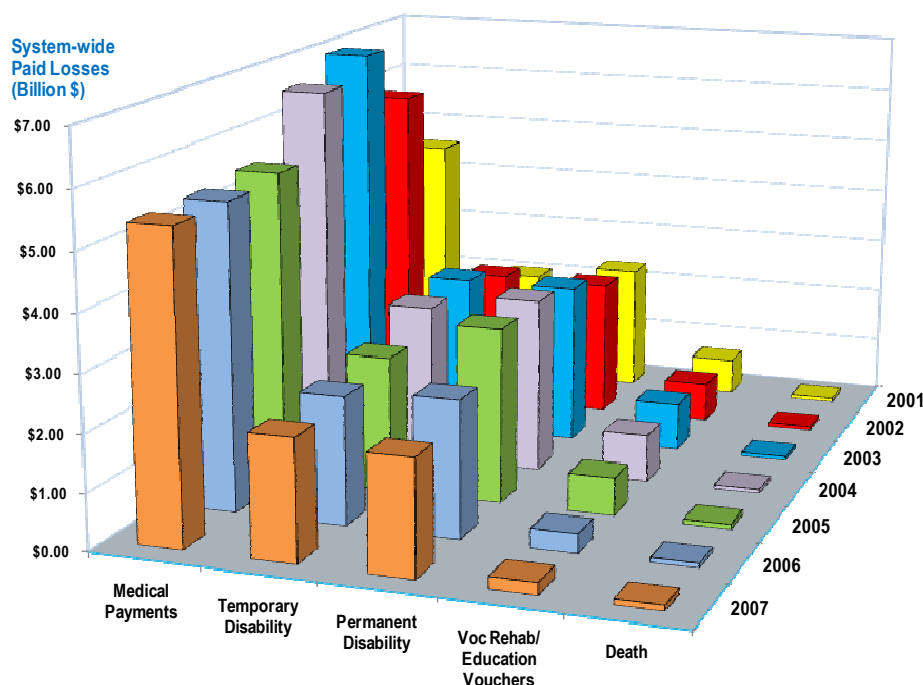
Source for Insured figures above is WCIRB Losses and Expenses report August, 2008. Other figures are calculated by CHSWC using 0.43 multiplier for equivalent cost components. The equivalent expense components are estimated as follows.

<b>** EXPENSES (Million \$)</b>	<i><b>Insured</b></i>	<i><b>Self-Insured and State</b></i>	<i><b>All Employers</b></i>
<i>Loss Adjustment Expense</i>	\$1,811	\$779	\$2,590
<i>Commissions and Brokerage</i>	\$942	X	\$942
<i>Other Acquisition Expenses</i>	\$445	X	\$445
<i>General Expenses</i>	\$695	\$299	\$994
<i>Premium and Other Taxes</i>	\$352	X	\$352
<b>Total</b>	<b>\$4,245</b>	<b>\$1,078</b>	<b>\$5,323</b>

Workers' compensation is generally a no-fault system that provides statutory benefits for occupational injuries or illnesses. Benefits consist of medical treatment, temporary disability (TD) payments, permanent disability (PD) payments, return-to-work assistance, and death benefits. The overall amounts paid in each of these categories systemwide are shown in the following chart. These figures are based on insurer- paid amounts multiplied by 1.43 to include estimated amounts paid by self-insured employers and the State.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Systemwide\* Paid Benefits, by Year and Type of Payment (Billion \$)



\* System-wide amounts estimated at 1.43 times the amounts reported by insurers

Data Source: WCIRB

### ***Costs Reached a Crisis in 2003***

Both the increases in the costs of workers' compensation benefits and changes in the workers' compensation insurance industry were factors contributing to a workers' compensation crisis that peaked in 2003. The crisis propelled reforms enacted in 2003 and 2004 that reduced the cost of benefits. Within four years, the average rate for workers' compensation insurance fell by more than 50 percent. The impact on injured workers' benefits is the subject of continuing study.

### ***Increasing Cost of Benefits***

The costs of workers' compensation benefits increased greatly between 1997 and 2003. The total costs of the California workers' compensation system more than tripled, growing from \$8.0 billion in 1997 to \$29.3 billion in 2003.<sup>2</sup>

### ***Medical Costs***

Medical costs, which are the largest single category of worker's compensation costs, rose most sharply, from \$2.9 billion in 1997 to \$7.0 billion in 2003. The rate of increase in medical cost per workers' compensation claim far exceeded the rate of increase in the consumer price index for medical care. The cost increase is driven partly by the availability of new medical technologies and drugs that are increasingly costly. Furthermore, the rate of utilization of medical goods and services was higher in

<sup>2</sup> The total cost of the workers' compensation figures consists of medical care payments and wage replacement benefits to injured workers, along with administrative expenses and adjustments to reserves, as calculated by CHSWC based on insurer data from WCIRB. *Annual Reports*, San Francisco: WCIRB, 1998, 2004.



## SYSTEM COSTS AND BENEFITS OVERVIEW

workers' compensation than in other insurance systems, as well as higher in California workers' compensation than in other states. The high rates of utilization did not produce superior health outcomes.

### **Weekly Benefits**

Other contributing factors to the increases in costs were the increases to the TD and PD benefits that began phasing into effect in 2003 following Assembly Bill (AB) 749. Benefits prior to AB 749 had not kept up with inflation:

- AB 749 brought weekly TD benefits up to two-thirds of the State's average weekly wage by 2005. This is the standard set by the National Commission on State Workers' Compensation Laws. AB 749 also indexed TD benefits to inflation in the state average weekly wage beginning in 2006, much like in other states.
- After AB 749, weekly PD benefits for 2006 were increased by about 40 percent over 2002 weekly rates, bringing the weekly rates to approximately equal the rates in 1984 after adjusting for inflation.

### ***Expansion of Liability***

Another factor contributing to the increase in workers' compensation costs for employers was the expansion of workers' compensation liability. Through most of the history of the workers' compensation system, the courts have expanded the boundaries of compensability. Partially counteracting this broad trend, there have been legislative restrictions from time to time, such as those imposing new conditions to compensability for psychiatric claims or post-termination claims. Although the system was originally seen as primarily dealing with traumatic injuries and accidents, it has come to be dominated by cumulative injuries and illnesses that may interact with the diseases and disorders of an aging population, the epidemic of obesity, and other public health issues outside the strictly occupational sphere.

### ***Instability in Insurance Industry***

When the workers' compensation insurance industry was deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances below their actual costs. Many insurers drew on their reserves or other sources of capital or relied on investment profits during bull market years. Investment income dropped with the return of a bear market. Between 2000 and 2003, 27 workers' compensation insurers went into liquidation. Subsequently, the surviving insurers charged higher premium rates to meet costs and begin to replenish reserves. A study is underway to obtain a more thorough analysis of the causes of the market instability. The effect on employers, however, was clear. Fewer insurers were available to write insurance, competition was reduced, and prices soared.

### ***Impact on Employer***

Costs for insurance peaked at an average of \$6.45 per \$100 of payroll in the latter half of 2003, making California the most expensive state in the U.S. for workers' compensation insurance. However, the average rate has dropped every year since that time. In the first three quarters of 2008, the average premium rate per \$100 of payroll was \$2.30 which is lower than it was in 1994.

## **Workers' Compensation Reforms: Recent Changes to the California System**

### **Key Legislative Changes**

California made significant legislative reforms in the workers' compensation system in 2002, 2003 and 2004. The reforms of 2002, 2003 and 2004 included provisions that accomplished the following:

- Control of medical costs:

## SYSTEM COSTS AND BENEFITS OVERVIEW

- Evidence-based medical treatment guidelines (e.g., ACOEM *Guidelines*).
- Utilization review of medical treatment, systematically applying the guidelines.
- A revised dispute resolution system using a qualified medical evaluator (QME) selected from a panel whenever an agreed medical evaluator (AME) is not used.
- Standardized and transparent medical fee schedules.
- New fee schedule for inpatient hospital, hospital out-patient departments and ambulatory surgery centers based on the Medicare fee plus 20 percent.
- A new fee schedule for pharmaceuticals based on the Medi-Cal Fee Schedule.
- Caps on the number of chiropractic, physical therapy and occupational therapy visits per claim.
- Employer control of medical care through medical provider networks (MPNs).
- Changes to indemnity benefits:
  - Indemnity benefit weekly rate increases enacted in 2002 legislation catching up for inflation and indexing weekly TD benefits to maintain the target levels recommended by the 1972 National Commission on State Workers' Compensation Laws.
  - Increase in number of weeks of PD benefits enacted in 2002, adding 19.75 weeks for all awards of 20 percent disability or greater, phased in at 1 week for every percentage point for awards below 20 percent.
  - Decrease in number of weeks of PD benefits enacted in 2004, reducing 14.75 weeks from awards of 15 percent disability or greater, phasing in the reduction at 1 week for every percentage point for awards below 15 percent. For awards of 70 percent to 99.75 percent, 7 weeks of benefits were added for every percentage above 69.75 percent.
  - Duration of TD benefits, formerly limited only by the evidence in each case, was restricted by the 2004 legislation to 104 weeks within 2 years of first payment, amended in 2007 to 104 weeks within 5 years of date of injury.
- Changes in PD compensation:
  - PD rating based on American Medical Association (AMA) *Guides* prescribed by 2004 legislation, implemented by Permanent Disability Rating Schedule (PDRS) revision effective 1/1/2005.
  - Apportionment to causation, the conclusive presumption that previously awarded disability, continues to exist for purpose of apportionment from a subsequent award.
  - Incentives for employers to offer return to work (RTW), with a change of + or – 15 percent in weekly PD benefits depending on whether an appropriate and timely offer is made.

These legislative changes will be described in greater detail in the following pages.

### Reform Results

- The cost of workers' compensation insurance has dropped by over 60 percent for insured employers.<sup>3</sup>
- Medical paid costs are down since their peak in 2003.
- PD benefits incurred are down by two-thirds.
- TD has declined, even before the two-year cap took effect, and without any direct cut in benefits.
- Claim frequency is down 45 percent from 1997.

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<sup>3</sup> WCIRB. "WCIRB Summary of September, 2008 Insurer Experience."

## SYSTEM COSTS AND BENEFITS OVERVIEW

Savings from the workers' compensation reforms have been estimated at \$13.7 billion per year for insurers.<sup>4</sup> Extending the estimates to include self-insured employers and the State, the reforms have reduced the direct cost of paying benefits plus loss adjustment expenses by a total of \$19.6 billion. Some of those savings have been reflected in reduced premiums for insured employers.

### **Descriptions of Major Legislative Changes, 2002-2004**

#### ***Medical Reforms***

California's workers' compensation medical costs grew by over 120 percent from 1997 to 2004. Prior to the reforms of AB 227, Senate Bill (SB) 228 and SB 899, overall costs for workers' compensation medical treatment were estimated to be 50 percent to 100 percent higher than group health. Several reforms were adopted in the recent legislative sessions to control medical costs including utilization controls and fee schedules.

#### ***Utilization***

According to the Workers' Compensation Research Institute (WCRI), the utilization of workers' compensation medical services in California was over 70 percent greater than other states. Several utilization measures were adopted to control this including:

- Caps on chiropractic, physical therapy, and occupational therapy visits, limiting each type of therapy to 24 visits per claim. According to WCIRB, following the enactment of workers' compensation reforms of SB 228, physical therapy utilization has been reduced by approximately 61 percent and chiropractic utilization by approximately 77 percent.
- Evidence-based guidelines for treatment of different injuries/illnesses. Scientifically based treatment guidelines were adopted to replace the nearly unlimited discretion of the treating physician.
- MPNs. Self-insured employers and insurers were allowed to establish MPNs envisioned as a selection of physicians skilled in dealing with the needs of injured workers, helping them return to work, and responding to the administrative needs of the workers' compensation system to deliver benefits efficiently.
- Elimination of the treating physician presumption of correctness on medical treatment issues for all dates of injury.

#### ***Choice of Medical Providers***

By default, injured workers must receive treatment from physicians designated by the employer or insurer for the first 30 days after reporting an injury, and then they have free choice of physicians after 30 days. These choices may be altered by the employee, employer, or insurer exercising various rights:

- If an employee has designated a personal physician prior to an injury, the employee has the right to be treated by that physician instead of a physician of the employer's choosing. Only employees for whom the employer provides group health coverage are eligible to predesignate, and the personal physician must meet requirements specified in Section 4600(d) of the Labor Code.

Predesignation has been available, but largely ignored for many years. However, significant conditions and restrictions were adopted in 2004 concurrently with the enactment of statutes authorizing MPNs (see below). The section was further amended in 2006, and it is scheduled to sunset on December 31, 2009. A valid predesignation takes precedence over the other provisions for choice of medical providers.

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<sup>4</sup> CHSWC Calculations based on WCIRB Report "WCIRB Legislative Cost Monitoring Report. October 9, 2008."

## SYSTEM COSTS AND BENEFITS OVERVIEW

- If an employer has contracted with an approved workers' compensation managed health care organization, known as an HCO, an employee injured while that contract is in force is required to receive treatment for the injury only in accordance with the HCO contract for the first 90 or 180 days after the report of the injury, depending on whether the employer also provides group health coverage. Statutes authorizing HCOs were enacted in the 1990s and remained unchanged by the 2003 and 2004 reforms. The emergence of MPNs (see below) with no time limits on medical control, however, has reduced the level of employer interest in HCOs.
- If a self-insured employer or the insurer of an insured employer has established an MPN approved by the Division of Workers' Compensation (DWC), an injured worker is required to receive all treatment within the MPN. There are provisions for transitioning patients into an MPN if treatment began before the MPN was established. The employee has free choice of physicians within the MPN after the first visit, but the employee has very limited rights to treatment outside the MPN. Unlike the choice of providers in HCOs or the default 30-day control, an employee covered by an MPN must choose from network providers indefinitely. MPNs were authorized by SB 899 enacted in 2004, with the first MPNs beginning operations in 2005. As of September 2008, DWC lists 1,281 approved MPNs.

### ***Fee Schedules***

CHSWC/RAND studies found that the lack of fee schedules regarding certain medical services and the delays in updating existing fee schedules created administrative inefficiency and therefore higher costs.

CHSWC studies found that the California workers' compensation system had high pharmaceutical reimbursement rates relative to other systems, such as Medicaid and employer health benefits, and that when compared with other workers' compensation systems, California's pharmaceutical reimbursement rates were near the highest among the various states reviewed. Workers' compensation reforms accomplished the following:

- Created a new fee schedule for hospital inpatient and out-patient departments and ambulatory surgery centers based on Medicare fees plus 20 percent. (SB 228)
- Created a new schedule for pharmaceuticals based on 100 percent of Medi-Cal. (SB 228)
- Required pharmacies and other providers of medical supplies and medicines to dispense a generic drug equivalent unless the prescribing doctor states otherwise in writing. (AB 749)
- Authorized employers and insurers to contract with pharmacies or pharmacy benefit networks pursuant to standards adopted by the DWC Administrative Director (AD). (AB 749)

In addition, CHSWC studies found that the payments for repackaged drugs dispensed by physicians based on the pre-existing Official Medical Fee Schedule (OMFS) were much higher than the pharmacy-dispensed drugs that are reimbursed according to the Medi-Cal formula. On average, physician-dispensed drugs cost 490 percent of what was paid to pharmacies. In some cases, including the most commonly prescribed drug dispensed by physicians, the mark-up exceeded 1,000 percent. The AD adopted regulations effective March 2007 restricting costs of repackaged drugs that are dispensed by physicians to be more in line with the Medi-Cal pharmacy fee schedule and what pharmacies are allowed to charge. Had this change been in effect in 2006, it would have saved about \$263 million in paid costs that year.

### ***Immediate Medical Care***

For claims reported after April 19, 2004, SB 899 requires that within one day of receiving an employee claim form, the employer will authorize the provision of medical treatment and will continue to provide such treatment until such time as the claim is accepted or denied. The employer's liability for medical treatment prior to the time the claim is accepted or denied is limited to \$10,000 (Labor Code Section 5402).

## SYSTEM COSTS AND BENEFITS OVERVIEW

WCIRB has reviewed information from DWC on denial rates to assess if any significant increases in denied claims have occurred beginning in 2004 as a result of these SB 899 provisions related to immediate medical care. As shown in the following table, information from DWC indicates that the rate of claims denied in calendar years 2004 through 2007 are generally comparable to that at the 2003 level. DWC's information on claim denials shows no evidence of a significant increase in frequency due to the SB 899.

### Statewide Claims Denied<sup>5</sup>

Accident Year	Total Reported Claims	Claims Denied	Claim Denial Rate
2002	882,754	48,906	5.5%
2003	841,727	51,958	6.2%
2004	796,182	48,277	6.1%
2005	748,900	45,903	6.1%
2006	722,444	45,182	6.3%
2007	670,401	44,324	6.6%

### Indemnity Benefits

#### *Permanent Disability Compensation*

##### *Changes to the Permanent Disability Rating Schedule*

PD benefits are meant to compensate workers for their remaining disability after they have reached maximum medical improvement from their injuries. However, a CHSWC study by RAND found that the pre-2005 California PDRS was procedurally complicated, expensive to administer, and inconsistent:

- Earnings losses for similarly rated impairments for different body parts varied dramatically.
- PD ratings varied among doctors evaluating the same or similar injuries, due in part to significant reliance on subjective criteria.

SB 899 revised the rating methodology for PD:

- One of the basic principles of a PD rating, "diminished ability to compete," was replaced by "diminished future earning capacity," which is defined as "a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees."
- The new PDRS, adopted January 1, 2005, was required to incorporate the AMA *Guides* for both descriptions and measurements of impairments and for the corresponding percentages of impairment. Evaluations according to the AMA *Guides* are expected to be more predictable and consistent than evaluations under the more subjective rating system that was in place for almost a century.

##### *Changes to Permanent Disability Indemnity Payments*

PD indemnity is payable as a weekly benefit for a number of weeks:

- The number of weeks depends entirely on the PD rating. The number of weeks is cumulative and progressive:

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<sup>5</sup> Reported in WCIRB's 2008 Legislative Cost Monitoring Report. Based on DWC's WCIS records as of July 25, 2008.

## SYSTEM COSTS AND BENEFITS OVERVIEW

- The number is cumulative, meaning that across the range of ratings from 1 percent to 99 percent, each additional percentage point of disability adds a specified number of weeks of benefits to the award.
- The number is progressive, meaning that the number of weeks added for each point in the upper ranges is larger than the number added for each point in the lower ranges.
- SB 899 reduced the number of weeks of PD benefits by one week for each of the first 14.75 percentage points of every disability rating. For the percentage points under 10, SB 899 reduced the weeks of indemnity payments from 4 to 3 weeks per point. For the percentage points from 10 percent to 14.75 percent, SB 899 reduced the weeks of indemnity payments from 5 to 4 weeks per point. Because an indemnity award is cumulative, this means that every award from 15 percent up to 69 percent is reduced by almost 15 weeks. Few awards reach 70 percent, but for those that do reach this range, SB 899 increased the number of weeks for each percentage point in the range of 70 percent to 99.75 percent from 9 weeks per point to 16 weeks per point.
- The weekly benefit amount depends on the employee's pre-injury earnings within a specified range. The range is low compared to most workers' wages, however, so most workers receive a maximum weekly rate rather than a full two-thirds of their pre-injury earnings.
- In a few cases, the weekly amount is affected by the PD rating. For most cases, the maximum weekly amount is \$230 per week. For the few cases with ratings of 70 percent to 99 percent, the maximum weekly amount is \$270. As noted above, most workers earn enough to qualify for the maximum weekly amount. These maximum amounts have not changed since 2006, when the last of the changes enacted in 2002 took effect.
- As an RTW incentive introduced by SB 899 in 2004, the weekly amount may also be affected by the employee's RTW status, as discussed below.
- Under SB 899, the weekly amount may be adjusted up or down by 15 percent depending on whether the employer offers the employee RTW.

### ***Changes to Permanent Disability Intended to Encourage Return to Work***

To encourage employers to offer an opportunity for disabled workers to return to work, the 2004 reforms introduced an adjustment of the weekly benefit amount. If the employer offers work according to statutory criteria, the employer pays the remaining weeks of benefits at a 15 percent lower weekly amount. Conversely, if the employer does not offer work according to statutory criteria, the employer pays the remaining weeks at a 15 percent higher weekly amount. This adjustment applies only to an employer of 50 or more employees.

Based on the greater number of workers who return to their at-injury employers than the number who do not, it was expected that this RTW incentive would save about 3 percent in overall PD costs while targeting the increased benefit to the workers who need it more.

Experience shows that the expected savings have not materialized. More cases are being paid at the bumped up rate than at the bumped down rate, implying that more workers are not receiving the appropriate RTW offers. This is contrary to previous evidence that more workers returned to their at-injury employers. To further confound expectations, nearly 70 percent of awards are paid without being adjusted either up or down, even though only 37 percent of employees work for businesses that are exempt from this bump-up/bump-down incentive. Anecdotal reports indicate that the statutory criteria are not practical. It appears that the statutory criteria for an RTW offer are unrealistic. In 2008, DWC convened multiple meetings of a Return-to-Work Advisory Committee in an attempt to identify appropriate revisions to this and other incentives and supports for returning injured workers to employment.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### ***Changes to Permanent Disability Apportionment***

A permanent disability may be only partially attributable to an industrial injury and partially attributable to other factors such as prior injuries or other conditions. Apportionment is the process of determining the portion of PD which an employer is required to compensate. A simplified summary of the law prior to 2004 is that an employer was liable for all of the PD except that portion which the employer could prove would have existed even in the absence of the industrial injury.

SB 899 replaced the former statutes with new provisions, including the rule, “apportionment of PD shall be based on causation.” In some situations, this might be compared to weighing all the industrial and non-industrial factors and assigning liability in proportion to the industrial contribution to the PD award. The courts have not yet resolved the many questions raised about the interpretation of the new statutory provisions.

The law prior to 2004 also permitted an employee to obtain an un-apportioned PD award despite receiving a prior award for a similar disability. The employee was permitted to show that he or she had recovered from the prior disability by evidence such as continuing to work, absence from medical treatment, or asserting freedom from the subjective complaints that had supported the prior award.

SB 899 adopted a presumption that any disability that has been previously awarded continues to exist. For example, if a worker with a previous disability award of 10 percent sustains an injury to the same part of the body and is then rated with a 15 percent disability, the 10 percent award may be subtracted from the award for the new injury. Prior to SB 899, it was not unusual for the worker in such a situation to receive a 15 percent award for the new injury because the employer had the burden of proving that the worker still had a 10 percent disability immediately prior to the second injury.

Another issue in apportionment is the method of converting an apportioned disability rating into an indemnity award. The issue arises from the fact that the indemnity tables are progressive, meaning that more weeks of benefits are payable for each percentage point in the upper ranges than for each percentage point in the lower ranges. Because of a difference in appellate court interpretations over how apportionment should be applied in calculating the dollar awards, apportionment awards at the Workers’ Compensation Appeals Board (WCAB) came to a standstill until the Supreme Court resolved the dispute in the Brodie and Welcher cases in 2007.

### ***Combined Effects of Changes to Permanent Disability***

The savings from the combined effects of changes to PD are approximately \$3.5 billion per year.<sup>6</sup> These savings resulted from:

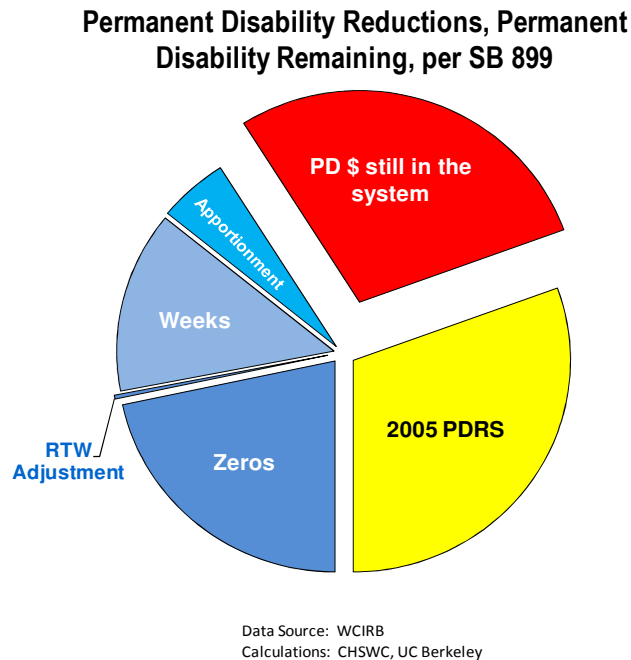
- A substantial fraction of cases that would have received PD ratings under the former PDRS do not have any impairment according to the *AMA Guides*. It is difficult to quantify the share of these “zeros”; however, current evidence suggests that as many as 25 percent of cases may be dropping out of the PD ratings entirely.
- The reduction in weeks at the lower end of all awards cuts the overall cost of PD by 16 percent, according to University of California (UC), Berkeley analysis.
- Apportionment is reducing PD awards by an average of 6 percent, according to an ongoing analysis of Disability Evaluation Unit (DEU) ratings.
- The 15 percent up or down adjustment of weekly benefits depending on an RTW offer has not produced any overall cost savings that can be substantiated.
- Average ratings under the new PDRS are approximately 40 percent lower than average ratings under the pre-2005 rating schedule, reducing the dollar value of awards by more than 52 percent, in addition to the other reductions already listed.

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<sup>6</sup> Based on WCIRB-projected pre-reform annual PD cost of \$3.7 billion, extended to include self-insured and State ( $\$3.7b \times 1.43 = \$5.3 \text{ billion}$ ). A two-thirds reduction is \$3.5 billion.

## SYSTEM COSTS AND BENEFITS OVERVIEW

The cumulative effect of all of these changes is to cut the systemwide cost of PD benefits by more than two-thirds, as depicted in the following chart.



### Temporary Disability Compensation

#### *Temporary Disability Duration*

Until 1979, TD benefits were limited to no more than 240 weeks of disability within five years of the date of injury. In 1978, the Department of Industrial Relations (DIR) recommended that the Governor sign SB 1851 to remove the limit because of the hardship in the occasional case that required hospitalization for additional surgery more than five years after the date of injury. The cost was expected to be insignificant. It was not expected that the amendment would open the door to continuous TD going on for more than five years. The limits on temporary total disability were removed in 1979.

As interpreted by the courts, the statute allowed continuous TD to extend without limit. The time limit for reopening for new and further disability is five years from date of injury. Once there was an interruption in TD, it could not be resumed after five years because that would constitute a reopening of the case.

The result was that a few workers managed to extend “temporary” disability indefinitely, creating a few egregious examples of abuse of a well-intended humanitarian amendment. Later research showed that prior to the 2004 reforms, only about 8 percent of workers’ compensation TD claims involved payments exceeding 104 weeks. These claims often extended much longer, and the payments beyond 104 weeks represented approximately 34 percent of all TD payments.

SB 899 enacted in 2004 limited TD to 104 weeks of benefits within two years after the first payment. The reform raised concerns that the new limit was too restrictive. The commonly cited reason is that the two-year clock is running while a worker returns to work so that if more time is needed later, the worker is no longer eligible for TD benefits. In 2007, the Legislature passed and the Governor signed Assembly Bill (AB) 338. The bill allows an injured worker to receive up to 104 weeks of aggregate disability payments within five years of the date of injury.



## SYSTEM COSTS AND BENEFITS OVERVIEW

The weekly amount of the TD benefit is set at two-thirds of the worker's average weekly wage, within an upper and a lower boundary. The upper boundary remained unchanged from 1996 until 2003, while inflation pushed wages up. TD benefits lagged farther and farther behind the target of two-thirds replacement of lost wages for many workers. The maximum amount was raised beginning in 2003, and now it is indexed for inflation so that the maximum recognized earnings are nearly 1.5 times the statewide average weekly wage. This means that the maximum TD rate is nearly equal to the statewide average weekly wage.

A California Workers' Compensation Institute (CWCI) report published January 23, 2006, found that more than 97 percent of TD recipients in California received two-thirds of their average weekly wage in TD payments.

### **Return-to-Work Assistance and Incentives**

#### ***Background***

The goals of improving the impact of injuries on workers, as well as reducing the cost to employers and the impact on the California economy, are best served when injured workers return to sustained employment:

- The CHSWC/RAND study of PD found that permanently disabled workers who return to work at the same employer have less wage loss.
- The CHSWC/RAND RTW studies found that California has the poorest rate of RTW compared with other states and recommended that RTW incentives be implemented.

Although California had high PD costs, the poor rate of RTW produced a high rate of uncompensated wage loss compared to other states. A vocational rehabilitation program enacted in the 1970s was intended to help workers return to suitable gainful employment when they were precluded by the effects of their injuries from returning to their usual occupations. Many stakeholders in the workers' compensation community reported dissatisfaction with the costs and outcomes of the vocational rehabilitation program. The proportion of rehabilitated injured workers working at the time of vocational rehabilitation plan completion declined during the 1990s.

In 2003, the Vocational Rehabilitation Program was repealed by AB 227 and replaced by a supplemental job displacement benefit (SJDB). SJDB is a voucher for education-related retraining or skills-enhancement for workers injured on or after January 1, 2004, who cannot return to their at-injury employers. In 2004, SB 899 provided that for workers injured before 2004, the vocational rehabilitation program would end January 1, 2009.

#### ***Return-to-Work Reforms***

The reforms employed several approaches to improving RTW including:

- Tiered PD benefit depending on whether or not the employer offers RTW. The weekly PD benefit rate is increased by 15 percent if the employer does not make a timely RTW offer and is decreased by 15 percent if the employer does make the offer, providing an incentive for employers. This applies to employers of 50 or more employees.
- Worksite-modification reimbursements of up to \$2,500 for employers to support accommodations by employers. This applies to employers of 50 or fewer employees.
- SJDB which helps pay for education for retraining or skills-enhancement for workers who could not return to work for the at-injury employer.
- Indirectly, but importantly, scientific standards for medical treatment which are expected to improve health outcomes and reduce the duration and severity of disability.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### **Evaluation of Return-to-Work after Reforms**

In 2007, DWC conducted a study of RTW rates. For a summary of the DWC research, see Special Report: Permanent Disability Rating Schedule, elsewhere in this Annual Report.

CHSWC has contracted with RAND to conduct a comprehensive study of the impact of recent RTW and vocational rehabilitation reform on employer costs and injured worker outcomes. For more information about this ongoing study, see the Projects and Studies section in this Annual Report.

### **Costs of Workers' Compensation in California**

Employers pay the cost of workers' compensation either by paying premiums for workers' compensation insurance or by self-insuring with the consent of the Department of Industrial Relations (DIR). Only the State of California can be legally uninsured as an employer. The cost to insured employers is measured in terms of premium, disregarding the impact of deductibles for lack of data. The cost to self-insured employers is measured mostly by incurred claims, similarly to the analysis of insurance company losses and expenses. These two aspects of employer cost will be discussed in the following pages, and the loss and expense analysis for insurers appears later in this System Overview section.

#### ***Costs Paid by Insured Employers***

In 2007, workers' compensation insurers earned \$13.2 billion in premiums from California employers.<sup>7</sup>

The cost of workers' compensation insurance in California has undergone dramatic changes in the past ten years due to a combination of factors.

When workers' compensation premiums were deregulated beginning in 1995, insurers competed by lowering premium rates, in many instances lower than their actual costs. Many insurers drew on their reserves to make up the difference, and several insurers went bankrupt. Subsequently, the surviving insurers charged higher premium rates to meet costs and began to replenish surplus.

The California workers' compensation legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improved the assessment of PD, and had significant impact on insurance costs.

As intended, the recent reforms reduced workers' compensation costs in California. It appears that the savings have been realized, and the system has returned to a trend of cost increases. The long-term trends of inflation and the inexorable rise in medical costs throughout the country are continuing to push workers' compensation costs up, but they are rising from a lower baseline than would have existed without the reforms.

#### ***Workers' Compensation Written Premium***

WCIRB defines written premium as the premium an insurer expects to earn over the policy period.

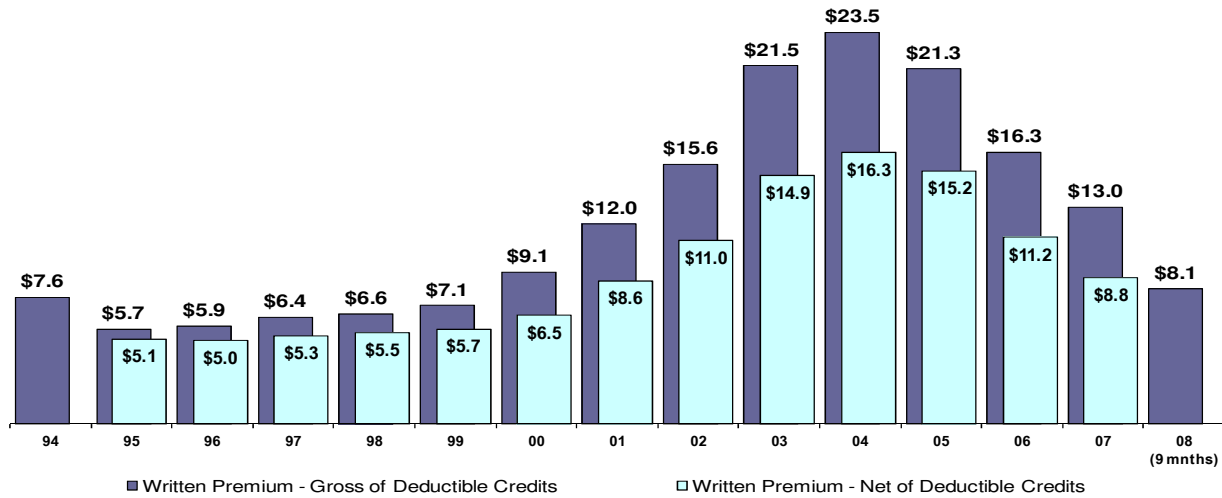
As shown in the following chart, workers' compensation written premium has undergone dramatic changes since 1994. Written premium decreased from 1994 to 1995, increased slightly in the latter part of the 1990s, more than tripled from 1999 through 2004, and experienced a significant decline from 2005 to 2007.

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<sup>7</sup> Source: "2007 California's Workers' Compensation Losses and Expenses." WCIRB – June 20, 2008. Note that earned premium is not identical to written premium. The two measurements are related, and the choice of which measurement to use depends on the purpose.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Workers' Compensation Written Premium as of September 30, 2008 (Billion \$)

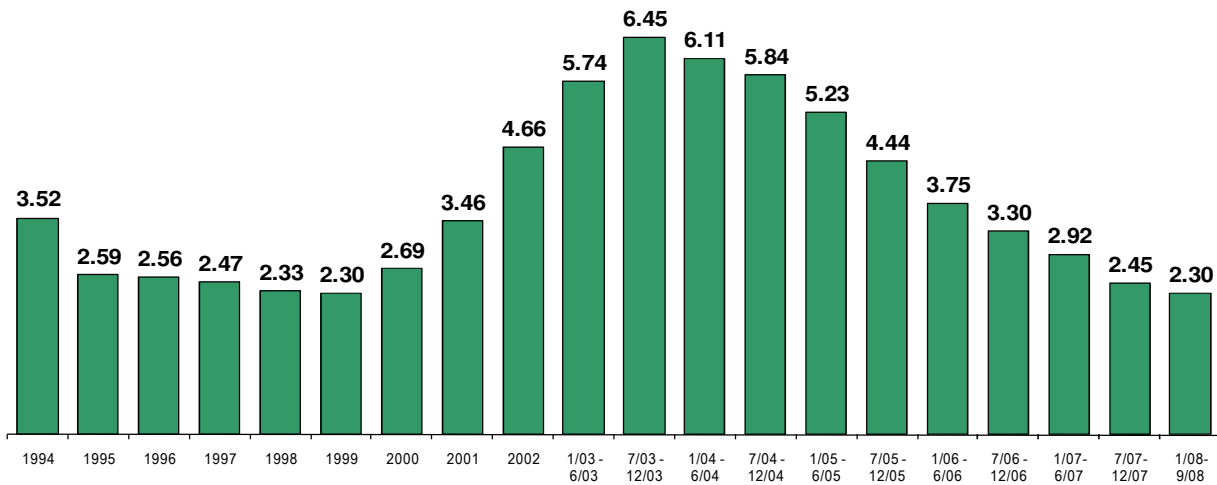


Data Source: WCIRB

### Workers' Compensation Average Premium Rate

The following chart shows the average workers' compensation premium rate per \$100 of payroll. The average dropped during the early-to-mid 1990s, stabilized during the mid-to-late 1990s, and then rose significantly beginning in 2000 up to the second half of 2003. However, the average rate has dropped every year since that time. In the first three quarters of 2008, the average rate was \$2.30, which was lower than in 1994.

### Average Workers' Compensation Insurer Rate Per \$100 of Payroll as of September 30, 2008 (Dollar \$)



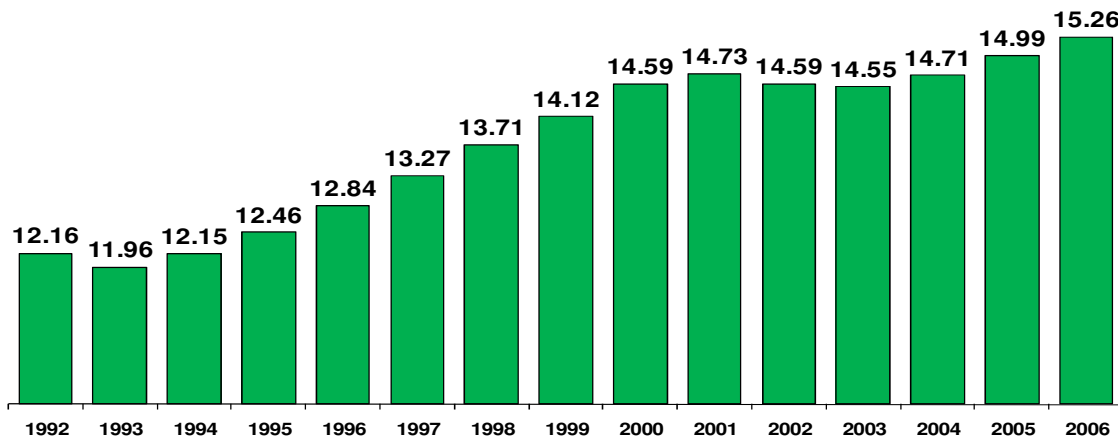
Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Workers Covered by Workers' Compensation Insurance*

The estimated number of California workers covered by workers' compensation insurance grew by about 21 percent from 12.16 million in 1992 to 14.79 million in 2001. From 2001 through 2006, the number of covered workers in California stabilized, averaging about 14.64 million per year. The estimated number of California workers covered by workers' compensation insurance grew by about 4 percent from 2004 to 2006.

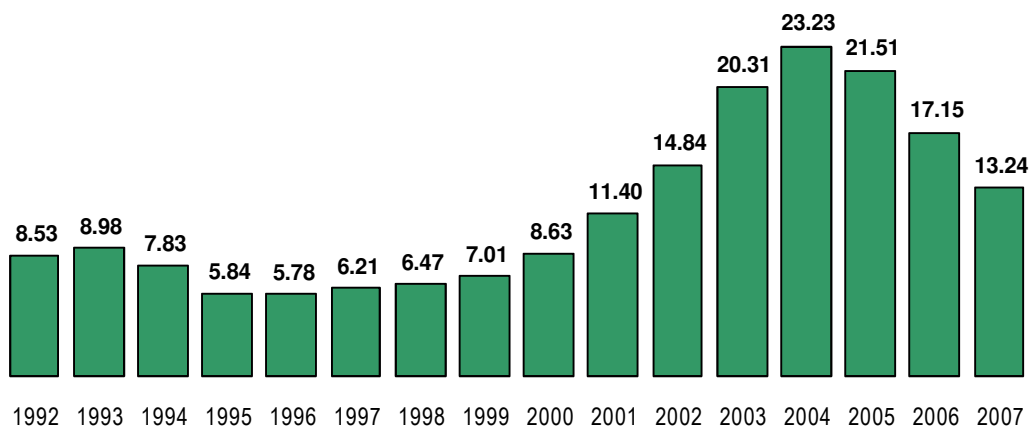
### **Estimated Number of Workers Covered by Workers' Compensation Insurance in California (Millions)**



Data Source: National Academy of Social Insurance (NASI)

### *Total Earned Premium*

### **Workers' Compensation Earned Premium (Billion \$)**



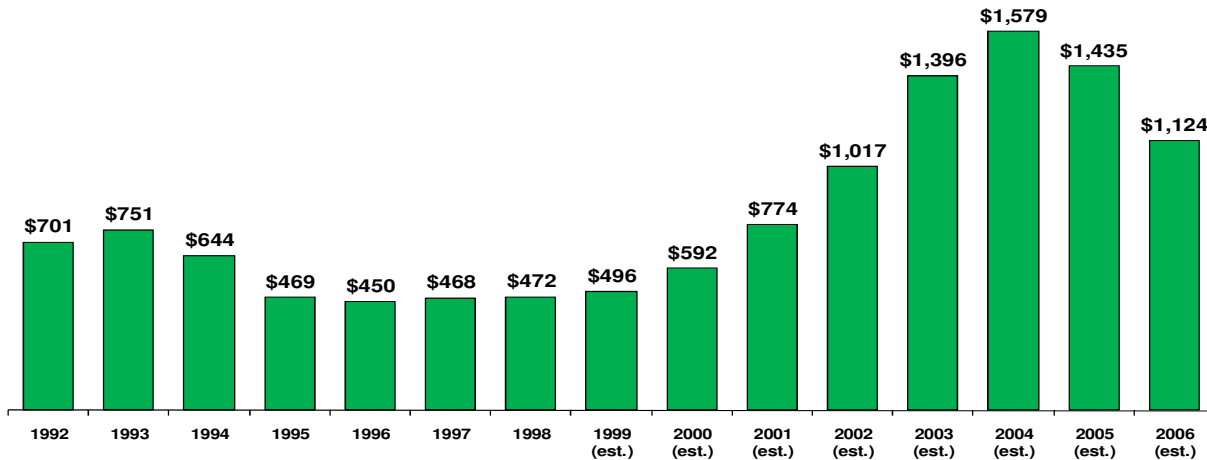
Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Average Earned Premium per Covered Worker*

As shown in the graph below, the average earned premium per covered worker dropped during the early-to-mid 1990s, leveled off for a few years, and more than tripled between 1999 and 2000. There was a 29 percent decrease in average earned premium per covered worker from 2004 to 2006.

### **Average Premium per Covered Worker**



Data Source: WCIRB and NASI  
Calculations: CHSWC

### **Costs Paid by Self-Insured Private and Public Employers**

The permissible alternatives to insurance are private self-insurance, public self-insurance for governmental entities either individually or in joint power authorities (JPAs), and legally uninsured State government. Part of the cost of workers' compensation for self-insured employers can be estimated by the amounts of benefits paid in a given year and by changes in reserves. This method is similar to an analysis done by WCIRB for the insurance industry, but the data for self-insured employers are less comprehensive than for insurers. The most complete estimate of the cost to self-insured employers is still obtained by taking some multiple of the cost to insured employers, excluding the cost elements that only apply to insurance. As described in the sidebars at the beginning of this System Overview, that multiple is 0.43, and the estimated cost to self-insured employers and the State for 2007 is \$4.175 billion.

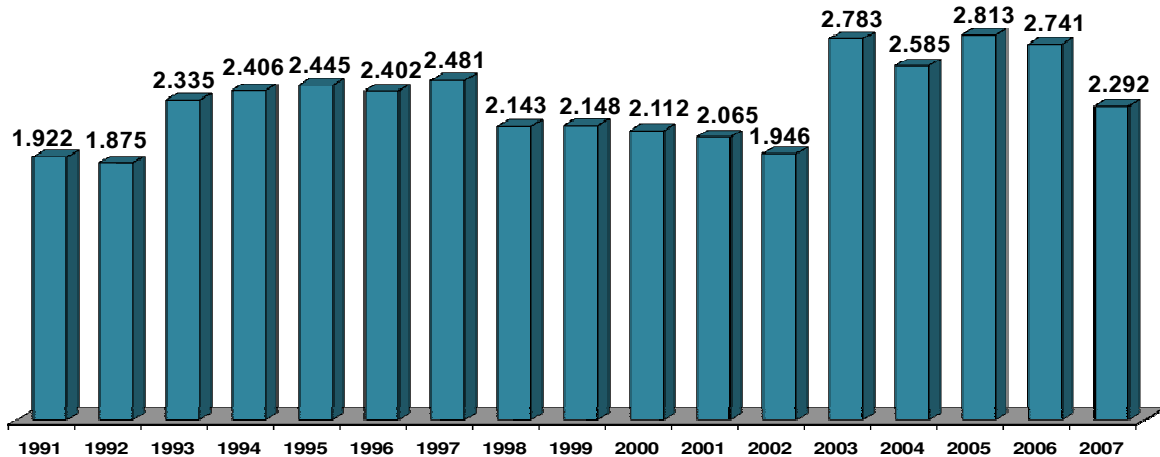
### ***Private Self-Insured Employers***

#### *Number of Employees*

The following chart shows the number of employees working for private self-insured employers between 1991 and 2007. A number of factors may affect the year-to-year changes. One striking comparison is to the average cost of insurance per \$100 of payroll for insured employers, as described earlier. When insurance is inexpensive, fewer employers may be attracted to self-insurance, but when insurance becomes more expensive, more employers move to self-insurance.

## SYSTEM COSTS AND BENEFITS OVERVIEW

**Number of Employees of Private Self-Insured Employers  
(Millions)**

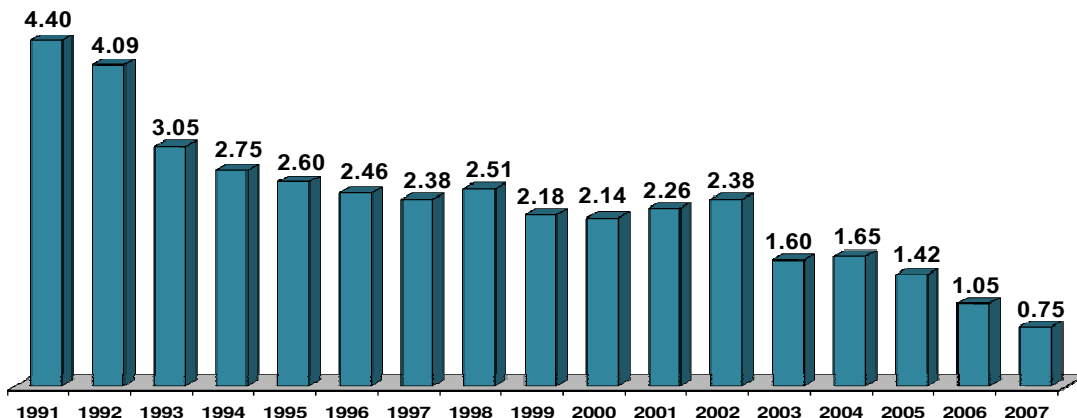


Data Source: DIR Self-Insurance Plans

### *Indemnity Claims*

The rate of indemnity claims per 100 employees of private self-insured employers reflects trends seen throughout the workers' compensation system. Frequency has been declining steadily for years. In addition, the reforms of the early 1990s and the reforms of 2003-2004 each produced distinct drops in frequency. Smaller year-to-year variations, including a small upswing in 1998 and a two-year upward trend from 2000 through 2002, are not correlated with any short-term variations in the insured market.

**Number of Indemnity Claims Per 100 Employees  
of Private Self-Insured Employers**

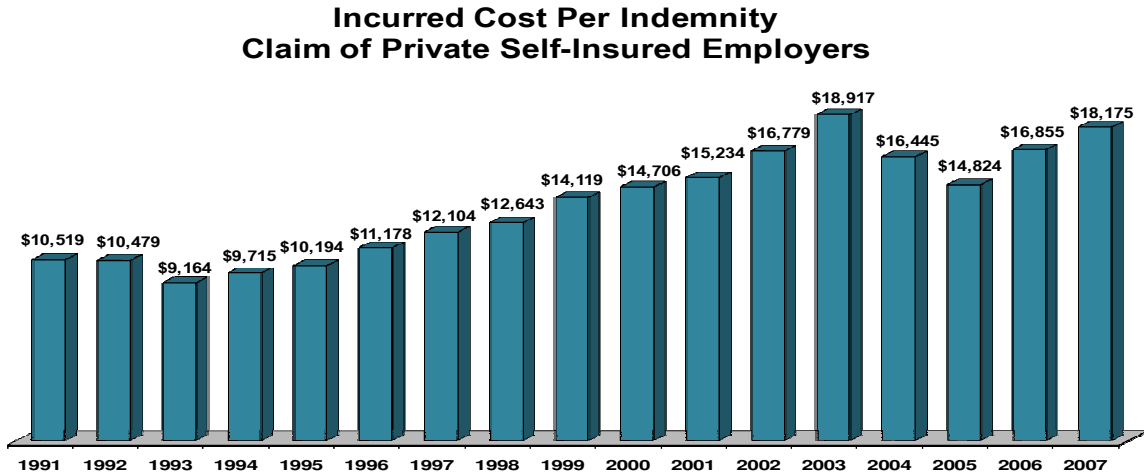


Data Source: DIR Self-Insurance Plans

## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Incurred Cost per Indemnity Claim*

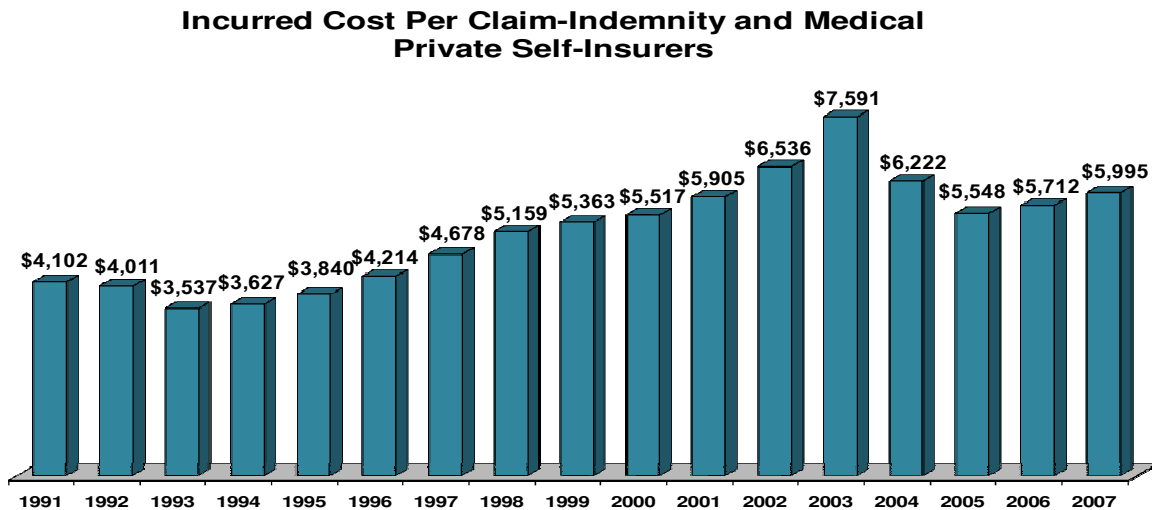
The following chart shows the incurred cost per indemnity claim for private self-insured employers, which has experienced changes similar to the changes for insurance companies. There has been a steady rise in the cost per indemnity claim until 2003, when the cost began to drop in response to the reforms of 2003 and 2004. The upward trend returned in 2006. Although the growth in cost per claim is back, the cost is now growing from a lower starting point than it would have been without the reforms.



Data Source: DIR Self-Insurance Plans

### *Incurred Cost per Indemnity and Medical Claim*

The average cost of all claims, including both indemnity claims and medical-only claims is naturally lower than the average cost of indemnity claims. While lower, it shows a pattern similar to the trends for indemnity claims. The rate of growth since 2006 has been lower for the average of all claims than in indemnity claims.



Data Source: DIR Self-Insurance Plans

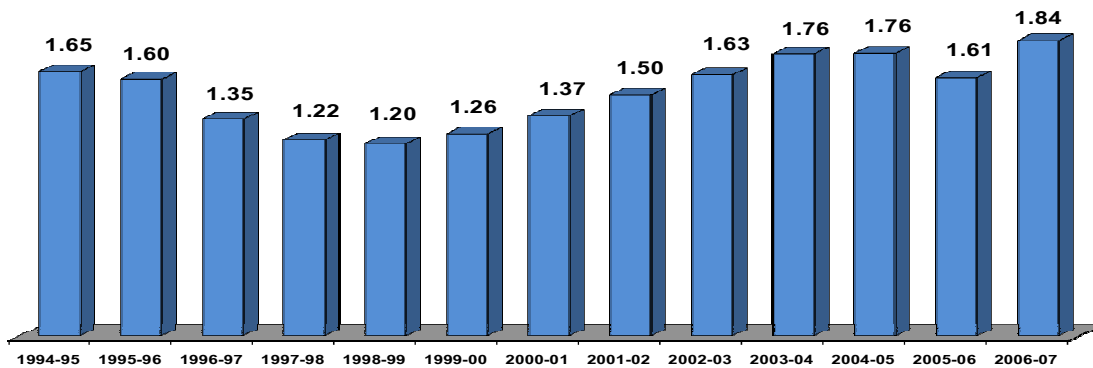
## SYSTEM COSTS AND BENEFITS OVERVIEW

### ***Public Self-Insured Employers***

#### *Number of Employees*

The following chart shows the number of public self-insured employers between fiscal years 1994-1995 and 2006-2007. The number of public self-insured employers declined between 1994-1995 and 1998-1999. Between 1998-1999 and 2003-2004, the number of employees working for public self-insured employers grew by 44 percent, then leveled off between 2003-2004 and 2004-2005, declined between 2004-2005 and 2005-2006, and increased by 14 percent in 2006-2007.

**Number of Employees of Public Self-Insured Employers  
(Millions)**

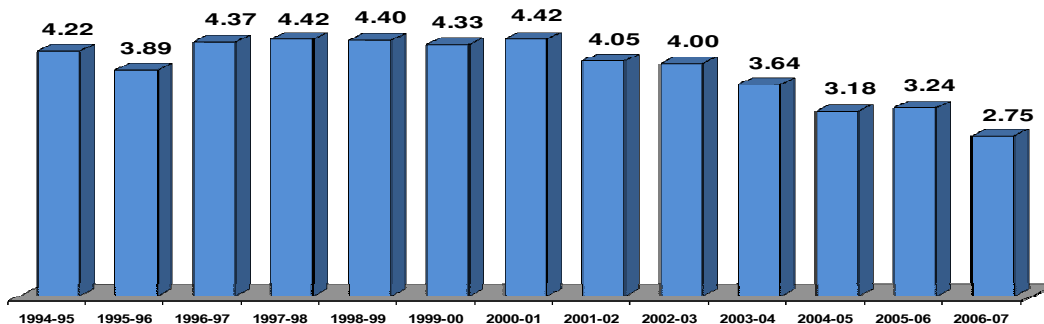


Data Source: DIR Self-Insurance Plans

#### *Indemnity Claims*

The number of indemnity claims by employees working for public self-insured employers remained steady between 1996-1997 to 2000-2001. Between 2000-2001 and 2004-2005, the number of indemnity claims decreased steadily, increased slightly between 2004-2005 and 2005-2006, then decreased again between 2005-2006 and 2006-2007 to the lowest level in the past 13 years. The rate of claims in the public sector appears to be less sensitive to the reforms which produced the marked drops in frequency in the private sector.

**Number of Indemnity Claims per 100 Employees  
of Public Self-Insured Employers**



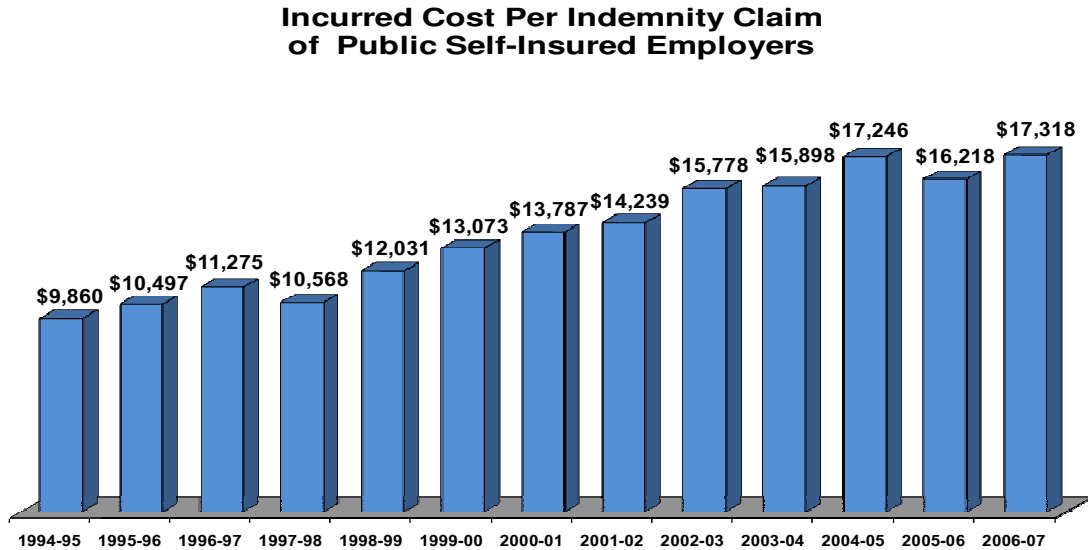
Data Source: DIR Self-Insurance Plans



## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Incurred Cost per Claim*

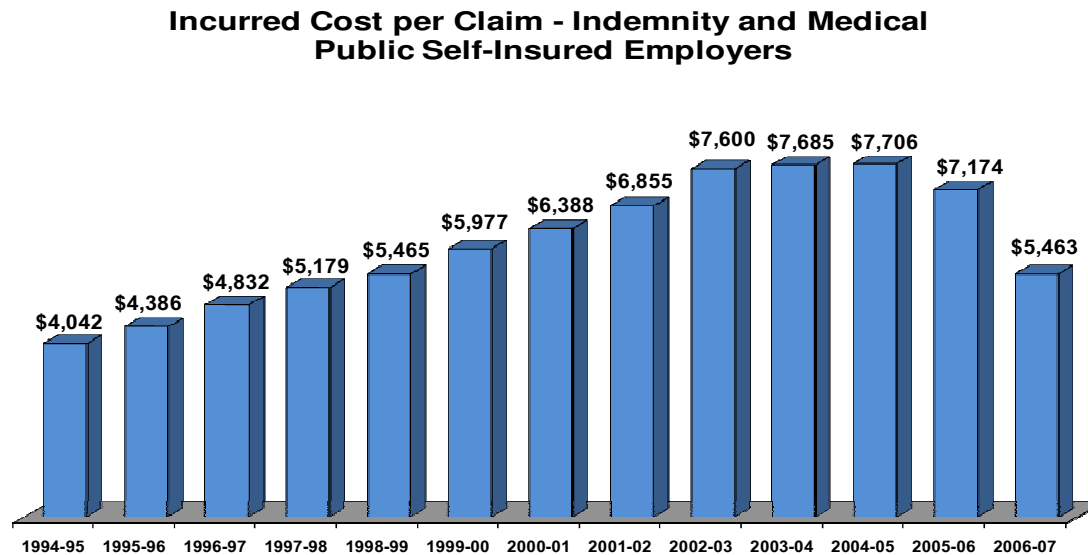
The following chart shows the incurred cost per indemnity claim for public self-insured employers. Between 1994-1995 and 2006-2007, the incurred cost per indemnity claim increased by about 76 percent from \$9,860 to \$17,318.



Data Source: DIR Self-Insurance Plans

### *Incurred Cost per Indemnity and Medical Claim*

The following chart shows the incurred cost per indemnity and medical claim for public self-insured employers. Between 1994-1995 and 2002-2003, the incurred cost per indemnity and medical claim nearly doubled, leveled off between 2003-2004 and 2004-2005, and then decreased by 29 percent between 2004-2005 and 2006-2007.



Data Source: DIR Self-Insurance Plans

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Workers' Compensation System Expenditures: Indemnity and Medical Benefits

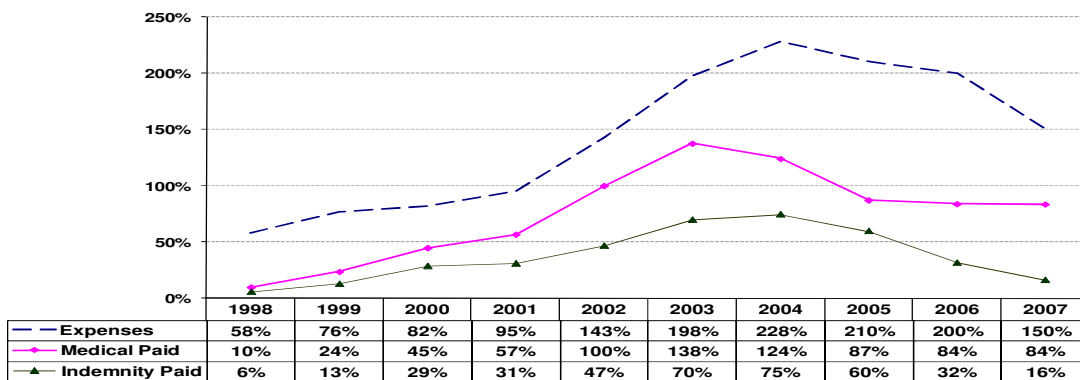
#### Overall Costs

##### Methodology for Estimating

The estimated percentages of total system costs are based on insured employer costs provided by WCIRB. The assumption is that these data apply also to self-insureds. Since self-insured employers and the State are estimated to be 30 percent of total California workers' compensation claims, the total system costs are calculated by increasing WCIRB data for insured employers to reflect that proportion.

##### Growth of Workers' Compensation Costs

**Workers' Compensation Costs Percent Growth by Year Compared With 1997**

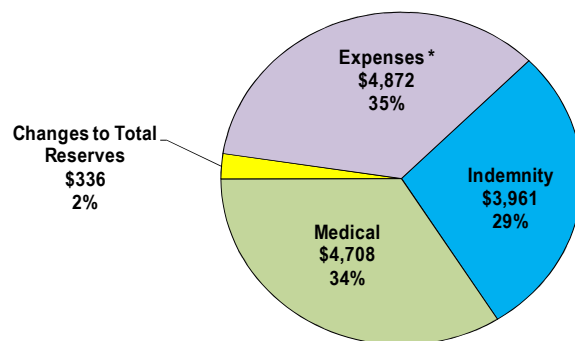


Data Source: WCIRB

##### Distribution of Workers' Compensation Costs by Type

The following chart shows the distribution of workers' compensation costs.

**Estimated Distribution of Workers' Compensation Costs, 2007  
(Million \$)**



\* The distribution shown in this chart included both insured and self-insured employers' costs. For insured costs, Expenses include allocated loss adjustment expenses, unallocated loss adjustment expenses, commissions and brokerage, other acquisition expenses, and premium taxes. Self-insured employers would not encounter some of those types of expenses. In addition, not shown in this distribution, about 15% of the earned premium in 2007 went to insurers' underwriting profit.

Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

### ***Indemnity Benefits***

WCIRB provided data for the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 70 percent of total California workers' compensation claims, estimated indemnity benefits are shown on the following chart for the total system, insured employers, self-insured employers, and the State of California.

#### **Systemwide Estimated Costs of Paid Indemnity Benefits**

<b>Indemnity Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Temporary Disability	\$2,246,785	\$2,126,502	-\$120,283
Permanent Total Disability	\$141,205	\$131,998	-\$9,208
Permanent Partial Disability	\$2,242,266	\$1,885,192	-\$357,074
Death	\$87,230	\$97,400	\$10,170
Funeral Expenses	\$2,209	\$1,909	-\$300
Life Pensions	\$62,846	\$71,923	\$9,078
Voc Rehab/Non-transferable Education Voucher	\$347,098	\$217,067	-\$130,031
Total	\$5,129,639	\$4,531,990	-\$597,649

#### **Paid by Insured Employers**

<b>Indemnity Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Temporary Disability *	\$1,571,178	\$1,487,064	-\$84,114
Permanent Total Disability *	\$98,745	\$92,306	-\$6,439
Permanent Partial Disability *	\$1,568,018	\$1,318,316	-\$249,702
Death *	\$61,000	\$68,112	\$7,112
Funeral Expenses	\$1,545	\$1,335	-\$210
Life Pensions	\$43,948	\$50,296	\$6,348
Voc Rehab/Non-transferable Education Voucher *	\$242,726	\$151,795	-\$90,931
Total	\$3,587,160	\$3,169,224	-\$417,936

#### **Paid by Self-Insured Employers and the State\*\***

<b>Indemnity Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Temporary Disability	\$675,607	\$639,438	-\$36,169
Permanent Total Disability	\$42,460	\$39,692	-\$2,769
Permanent Partial Disability	\$674,248	\$566,876	-\$107,372
Death	\$26,230	\$29,288	\$3,058
Funeral Expenses	\$664	\$574	-\$90
Life Pensions	\$18,898	\$21,627	\$2,730
Voc Rehab/Non-transferable Education Voucher	\$104,372	\$65,272	-\$39,100
Total	\$1,542,479	\$1,362,766	-\$179,712

\* Single Sum Settlement and Other Indemnity payments have been allocated to the benefit categories.

\*\* Figures estimated based on insured employers' costs.

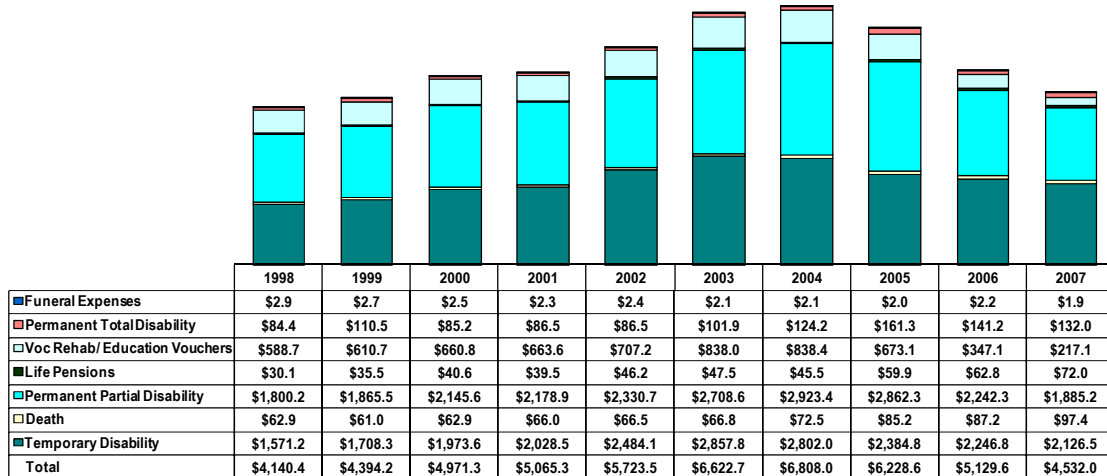
Self-insured employers and the State of California are estimated to comprise 30 percent of all California workers' compensation claims.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Trends in Paid Indemnity Benefits

The estimated systemwide paid indemnity costs for the past several years are displayed in the chart below. The cost of the total indemnity benefit increased 64 percent from 1998 to 2004, then decreased by 33.4 percent from 2004 to 2007. The costs of TD, PPD, and vocational rehabilitation/non-transferrable education vouchers also declined from 2004 to 2007 after years of growth. Costs of life pensions, death benefits and permanent total disability increased from 1998 through 2007.

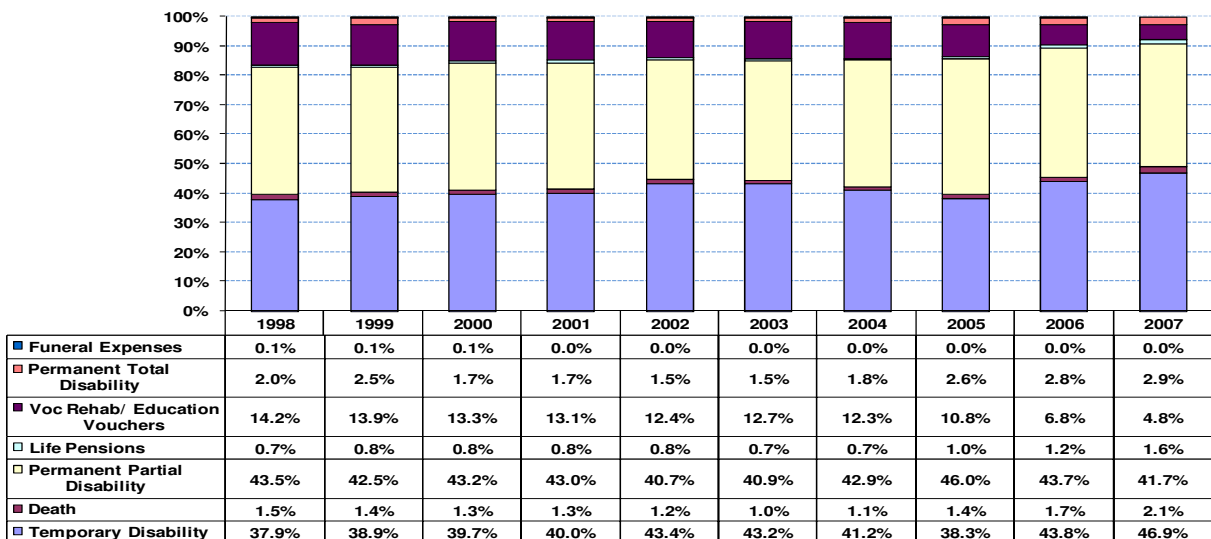
**Workers' Compensation Paid Indemnity Benefit by Type  
Systemwide Estimated Costs\*  
(Million \$)**



Data Source: WCIRB  
Calculations: CHSWC

The following chart depicts the proportion of the total cost of paid indemnity contributed by each component in the above chart.

**Distribution of Paid Indemnity Benefits**



Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Vocational Rehabilitation and Supplemental Job Displacement Benefits Costs

The reforms of 2003 eliminated vocational rehabilitation for injuries arising on or after January 1, 2004, and replaced it with a supplemental job displacement benefit (SJDB). The vocational rehabilitation statutes are repealed entirely effective January 1, 2009. Consequently, the expenditures for vocational rehabilitation are dwindling rapidly as the remaining pre-2004 cases run off. SJDB expenditures are taking their place, but at a much lower level.

#### *Vocational Rehabilitation Settlements*

WCIRB has compiled information from the WCIRB Permanent Disability Claim Survey on vocational rehabilitation settlements. In total, 14.2 percent of accident year 2003 PD claim costs involved vocational rehabilitation settlements of, on average, 40 months. The average settlement in these cases was \$6,095. For accident year 2003, the first year in which such settlements were allowed, settlements comprised 16 percent of total vocational rehabilitation costs.

#### *Supplemental Job Displacement Benefit Vouchers*

AB 227 and SB 228 created a system of non-transferable educational vouchers effective for injuries occurring on or after January 1, 2004. WCIRB's estimate of the cost of educational vouchers is based on information compiled from the most current WCIRB Permanent Disability Claim Survey. In total, 18.3 percent of accident year 2004 PD claim costs involved educational vouchers, and the average cost of the educational vouchers was approximately \$5,900. For the 2005 accident year at first survey level, 20.7 percent of sampled PD claims were reported as involving educational vouchers with an estimated average cost of approximately \$5,600.

#### *Vocational Rehabilitation and Supplemental Job Displacement Benefit Vouchers Incurred Costs*

WCIRB has summarized the vocational rehabilitation information reported on unit statistical reports. The table below shows a summary of vocational rehabilitation information by accident year, with losses evaluated at a combination of second and third unit report levels, depending on which policy year the accident year claim was reported. This unit statistical information suggests that vocational rehabilitation cost per claim has declined by approximately 80 percent subsequent to the reforms.

**Table: Vocational Rehabilitation (VR) and Supplemental Job Displacement Benefit (SJDB) Vouchers Incurred Costs at Second/Third Report Level**

Policy Year/ Accident Year (AY)	Percent of Indemnity Claims with VR & SJDB Vouchers	Change from Average of AY 2001-03	VR and SJDB Vouchers Cost per VR & SJDB Vouchers Claim	Change from Average of AY 2001-03	VR and SJDB Vouchers Cost per Indemnity Claim	VR and SJDB Cost Level Change from Average of AY 2001-03
2001	25.1%	-	\$9,525	-	\$2,387	-
2002	25.2%	-	\$9,635	-	\$2,426	-
2003	24.0%	-	\$8,987	-	\$2,158	-
2004	12.1%	-51%	\$4,187	-55%	\$505	-78%
2005	11.2%	-55%	\$3,923	-58%	\$441	-81%

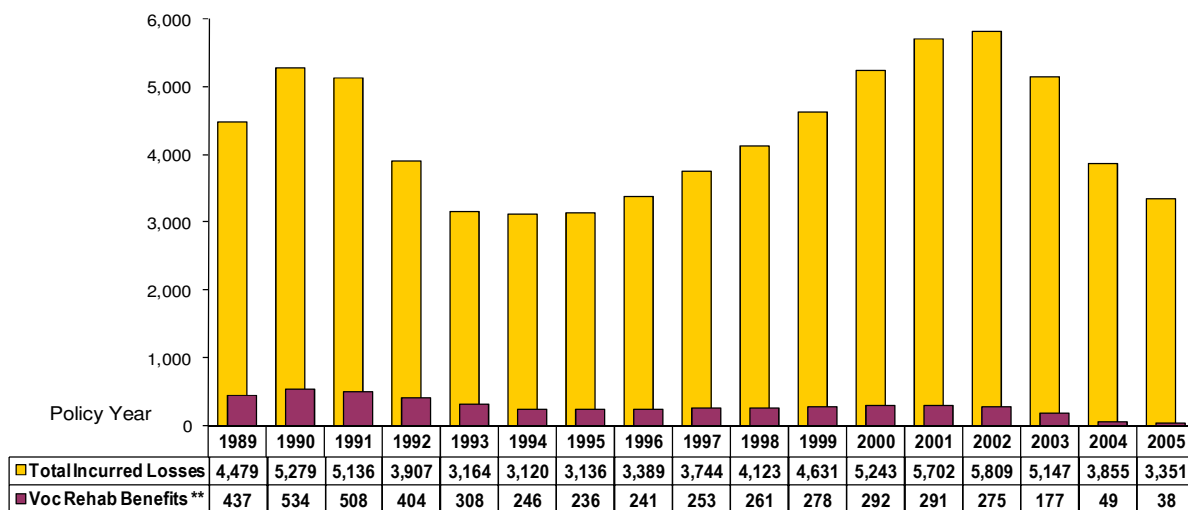
Source: WCIRB

AB 227 enacted in 2003, in combination with clean-up language in SB 899 enacted in 2004, repealed the workers' compensation vocational rehabilitation benefit for dates of injury on or after January 1, 2004. Vocational rehabilitation benefits are available only to eligible workers who were injured before 2004 and will be available only through December 31, 2008. The chart below presents the most recent data

## SYSTEM COSTS AND BENEFITS OVERVIEW

available through 2005 on vocational rehabilitation costs including SJDB vouchers (non-transferable educational vouchers) beginning from policy year 2003.

### Vocational Rehabilitation Benefits and SJDB Vouchers\* Compared with Total Incurred Losses, WCIRB 1st Report Level (Million \$)



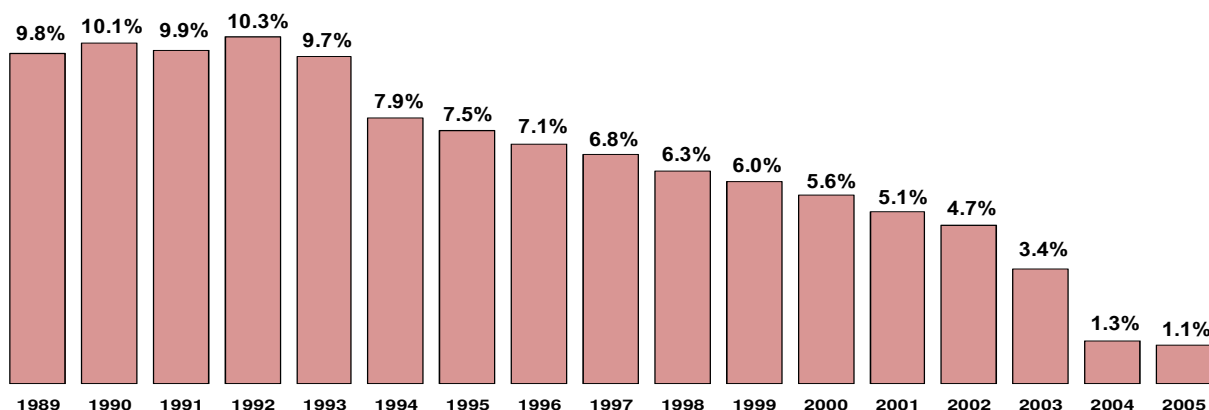
\* The Vocational Rehabilitation statutes are repealed entirely effective January 1, 2009, and replaced with Supplemental Job Displacement Benefits.

\*\* Policy year 2003 "vocational rehabilitation benefits" contain a mix of vocational rehabilitation costs and non-transferable educational voucher costs. Policy year 2004 and later "vocational rehabilitation benefits" contain mainly non-transferable educational voucher costs.

Data Source: WCIRB

The chart below shows the data demonstrated in the previous graph on vocational rehabilitation costs including SJDB vouchers (non-transferable educational vouchers) costs beginning from policy year 2003 as a percentage of total incurred losses. The vocational rehabilitation costs as a percentage of losses reached their peak in 1992 and have been declining since then.

### Vocational Rehabilitation and SJDB Vouchers Costs\* as Percent of Total Incurred Losses



\* Policy year 2003 costs include a mix of vocational rehabilitation costs and non-transferable educational voucher costs.

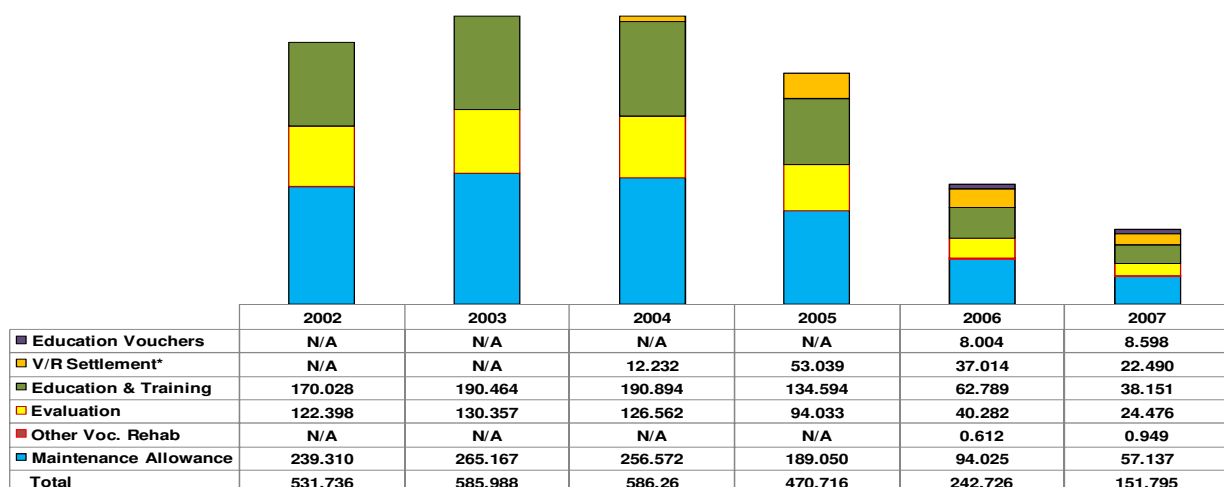
Policy year 2004 and later costs include mainly non-transferable educational voucher costs.

Data Source: WCIRB (1st Level Reports for Each Policy Year)

## SYSTEM COSTS AND BENEFITS OVERVIEW

The following chart shows the amounts paid for each component of the vocational rehabilitation benefit including newly introduced vocational rehabilitation settlement and SJDB vouchers for the period from 2002 through 2007.

**Paid Vocational Rehabilitation Benefits and SJDB Vouchers  
(Million \$)**

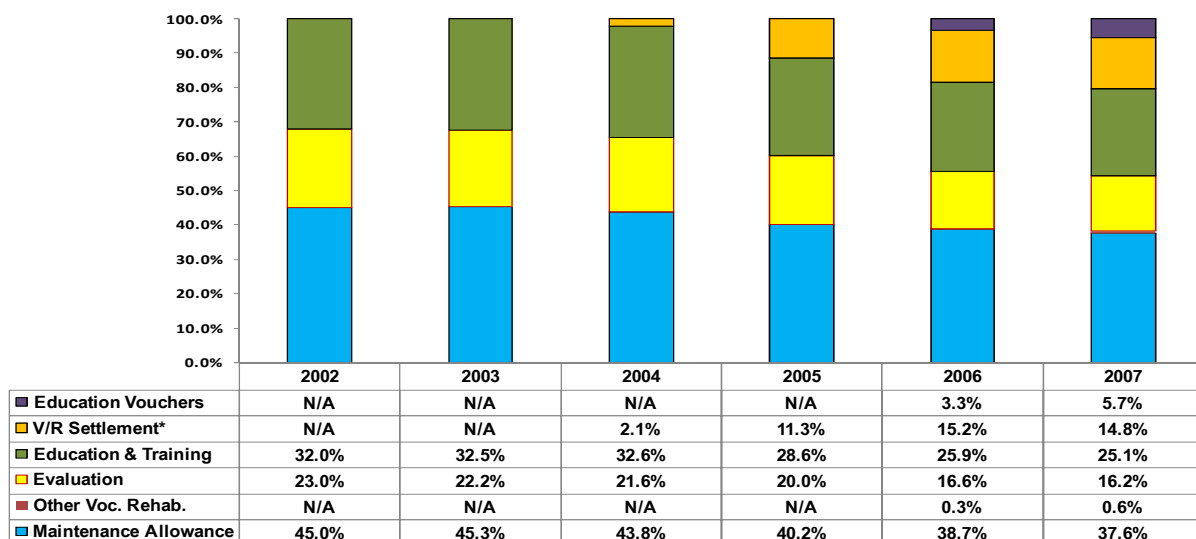


\* Vocational Rehabilitation Settlements were allowed on injuries occurring on or after January 1, 2003, pursuant to Assembly Bill No. 749

Data Source: WCIRB

The chart below depicts the proportion that each component demonstrated in the previous graph contributes to the total. Since AB 749 allowed vocational rehabilitation settlements for injuries on or after January 1, 2003, such settlements have grown to about 15 percent of the total paid costs in 2006 and 2007.

**Distribution of Paid Vocational Rehabilitation Benefits and  
SJDB Vouchers**



\* Vocational Rehabilitation Settlements were allowed on injuries occurring on or after January 1, 2003, pursuant to Assembly Bill No. 749

Data Source: WCIRB

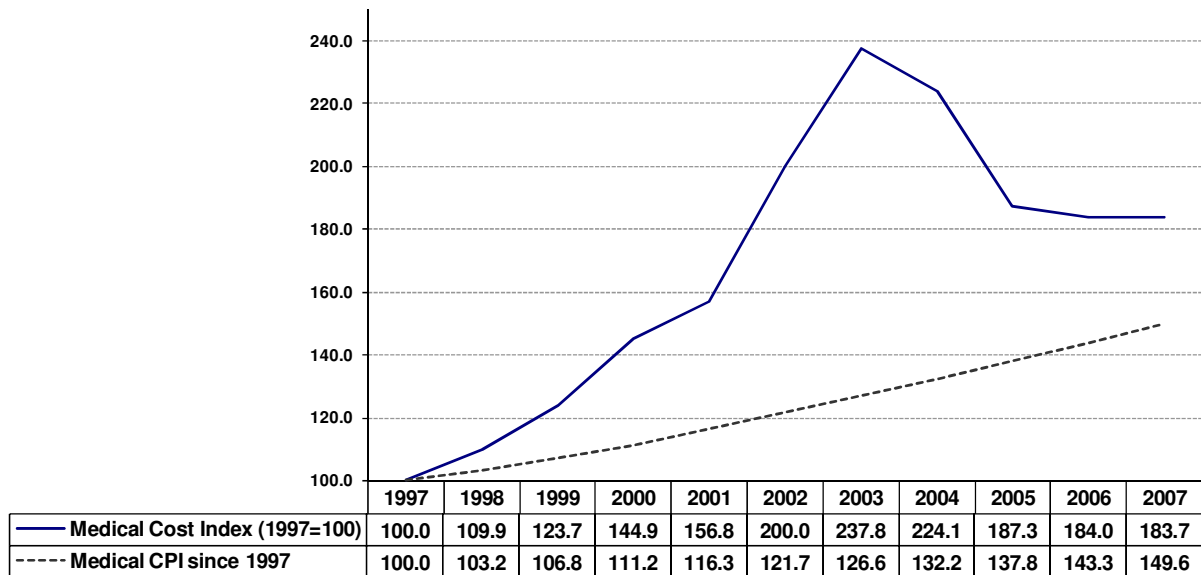
## SYSTEM COSTS AND BENEFITS OVERVIEW

### Medical Benefits

#### Workers' Compensation Medical Costs vs. Medical Inflation

The following chart compares the growth rates of California's workers' compensation medical costs paid by insurers and self-insured employers with the medical component of the Consumer Price Index (CPI), also known as the "Medical CPI," a term used by economists to describe price increases in health care services.

**Growth of Workers' Compensation Medical Costs Compared to Medical Inflation Rate-Percent Change since 1997 (1997=100)**



Data Source: WCIRB; Bureau of Labor Statistics



## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Distribution of Medical Benefits: Where Does the Workers' Compensation Dollar Go?*

#### **Systemwide Estimated Costs - Medical Benefits Paid**

<b>Medical Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Physicians	\$2,285,038	\$2,209,782	-\$75,257
Capitated Medical	\$13,463	\$11,559	-\$1,905
Hospital	\$1,167,858	\$1,381,931	-\$214,072
Pharmacy	\$545,045	\$497,144	-\$47,901
Payments Made Directly to Patient	\$899,574	\$803,903	\$95,671
Medical-Legal Evaluation	\$231,769	\$213,832	-\$17,936
Medical Cost-Containment Programs*	\$250,234	\$267,676	\$17,442
Total	\$5,392,982	\$5,385,826	-\$7,156

#### **Paid by Insured Employers**

<b>Medical Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Physicians	\$1,597,929	\$1,545,302	-\$52,627
Capitated Medical	\$9,415	\$8,083	-\$1,332
Hospital	\$816,684	\$966,385	-\$149,701
Pharmacy	\$381,150	\$347,653	-\$33,497
Payments Made Directly to Patient	\$629,073	\$562,170	-\$66,903
Medical-Legal Evaluation	\$162,076	\$149,533	-\$12,543
Medical Cost-Containment Programs*	\$174,989	\$187,186	\$12,197
Total	\$3,771,316	\$3,766,312	-\$5,004

#### **Paid by Self-Insured Employers\*\***

<b>Medical Benefits (Thousand \$)</b>	<b>2006</b>	<b>2007</b>	<b>Change</b>
Physicians	\$687,109	\$664,480	-\$22,630
Capitated Medical	\$4,048	\$3,476	-\$573
Hospital	\$351,174	\$415,546	-\$64,371
Pharmacy	\$163,895	\$149,491	-\$14,404
Payments Made Directly to Patient	\$270,501	\$241,733	\$28,768
Medical-Legal Evaluation	\$69,693	\$64,299	-\$5,393
Medical Cost-Containment Programs*	\$75,245	\$80,490	\$5,245
Total	\$1,621,666	\$1,619,514	-\$2,152

\* Figures for medical cost-containment programs are based on a sample of insurers who reported medical cost-containment expenses to the WCIRB.

\*\* Figures estimated based on insured employers' costs.

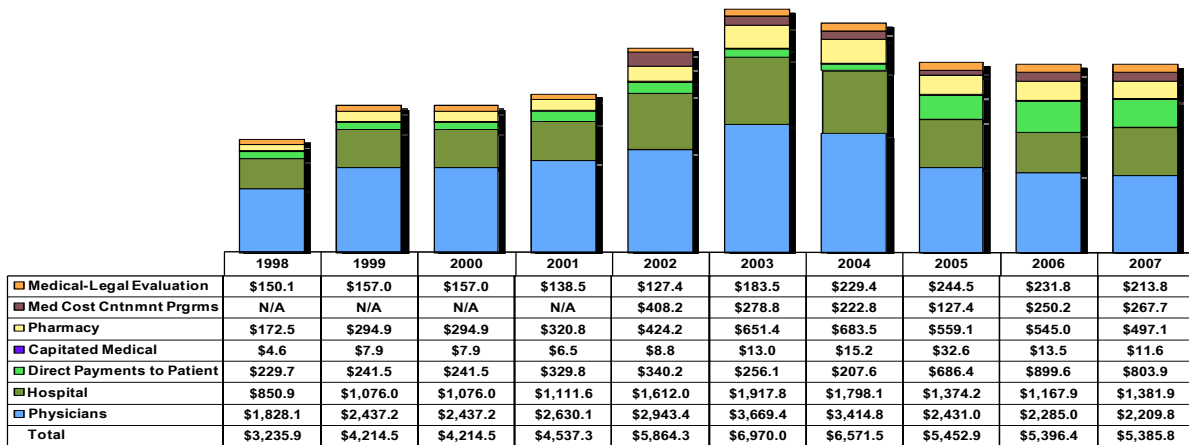
Self-insured employers and the State of California are estimated to comprise 30 percent of all California workers' compensation claims from 2007.

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Trends in Paid Medical Benefits

The estimated systemwide paid medical costs for the past several years are displayed in the chart below. The following trends may result from the impact of recent workers' compensation reforms. The cost of the total medical benefit doubled from 1998 to 2003, then decreased by 22.7 percent from 2003 to 2007. Pharmacy costs nearly quadrupled from 1998 through 2004, before declining slightly from 2004 to 2007. Expenditures on medical cost-containment programs in 2005 were less than a third of what they were in 2002 and doubled again in 2007. Hospital costs more than doubled from 1998 to 2003, then declined by 39 percent from 2003 to 2006, and slightly increased again in 2007. Medical-legal evaluation costs fluctuated from 1998 to 2002, then doubled between 2002 and 2006, and slightly decreased in 2007. Payments to physicians doubled from 1998 to 2003, then dropped by 39.8 percent from 2003 to 2007.

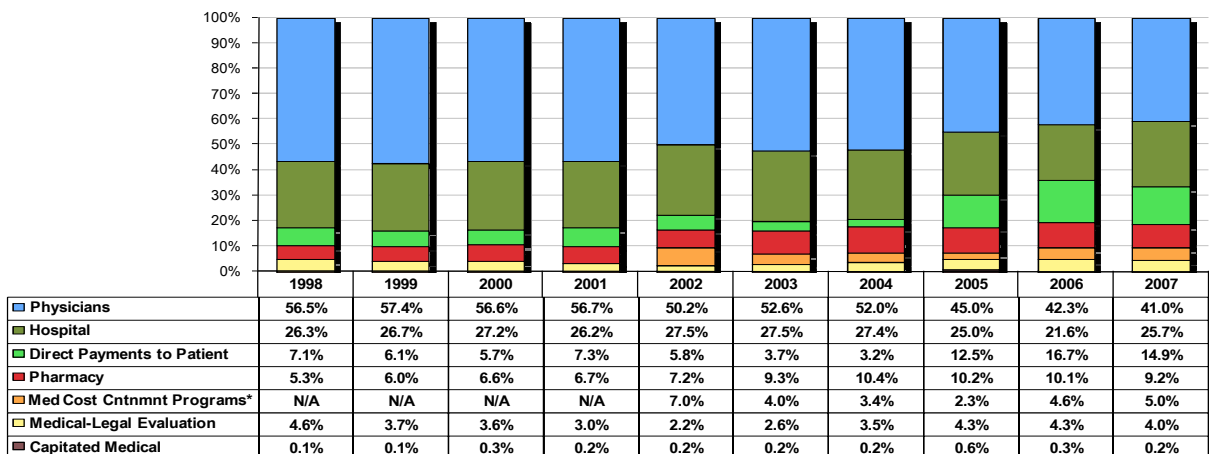
**Workers' Compensation Paid Medical Benefits by Type  
Systemwide Estimated Costs\* (Million \$)**



Source: WCIRB  
Calculations: CHSWC

The following chart depicts the proportion of the total cost of paid medical contributed by each component listed in the chart above.

**Distribution of Paid Medical Costs**



\* Figures for medical cost containment programs are based on a sample of insurers who reported medical cost containment expenses to the WCIRB. The reporting of this data was voluntary for calendar year 2002 but mandatory beginning with calendar year 2003 payments.

Source: WCIRB

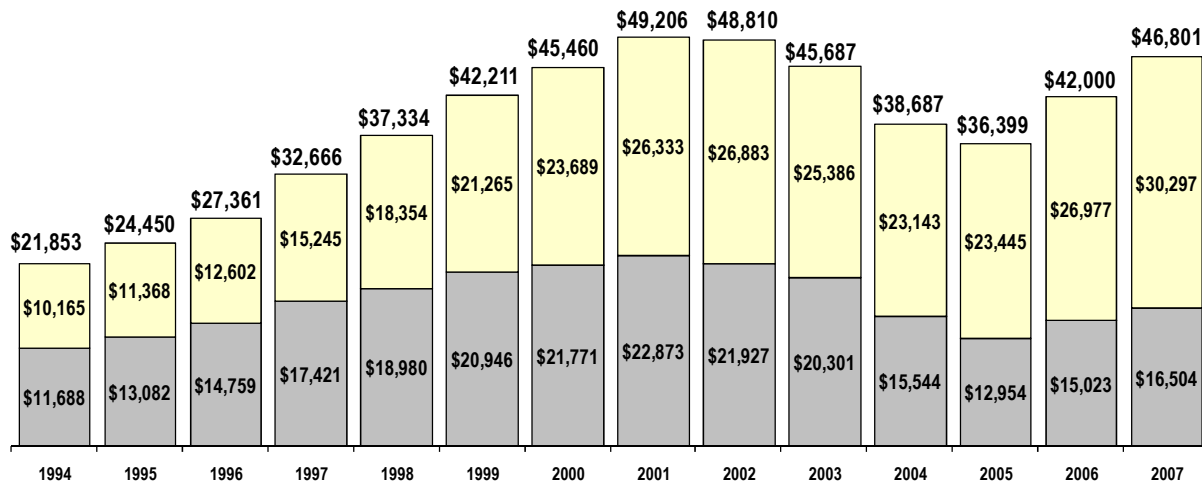
## SYSTEM COSTS AND BENEFITS OVERVIEW

### Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply.

The total average cost of indemnity claims decreased by 26 percent from 2001 to 2005, reflecting the impact of AB 227, SB 228 and SB 899. However, the total indemnity and medical average costs per claim increased by almost 29 percent between 2005 and 2007 back to the 2003 level.

**Estimated Ultimate Total Loss\* per Indemnity Claim**  
**Reflecting the Impact of AB 227, SB 228 & SB 899 as of September 30, 2008**



\* Excludes medical-only

■ Estimated ultimate indemnity per indemnity claim +  
 ■ Estimated ultimate medical per indemnity claim =  
 Estimated Ultimate Total Losses per Indemnity Claim

Source: WCIRB

Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

## SYSTEM COSTS AND BENEFITS OVERVIEW

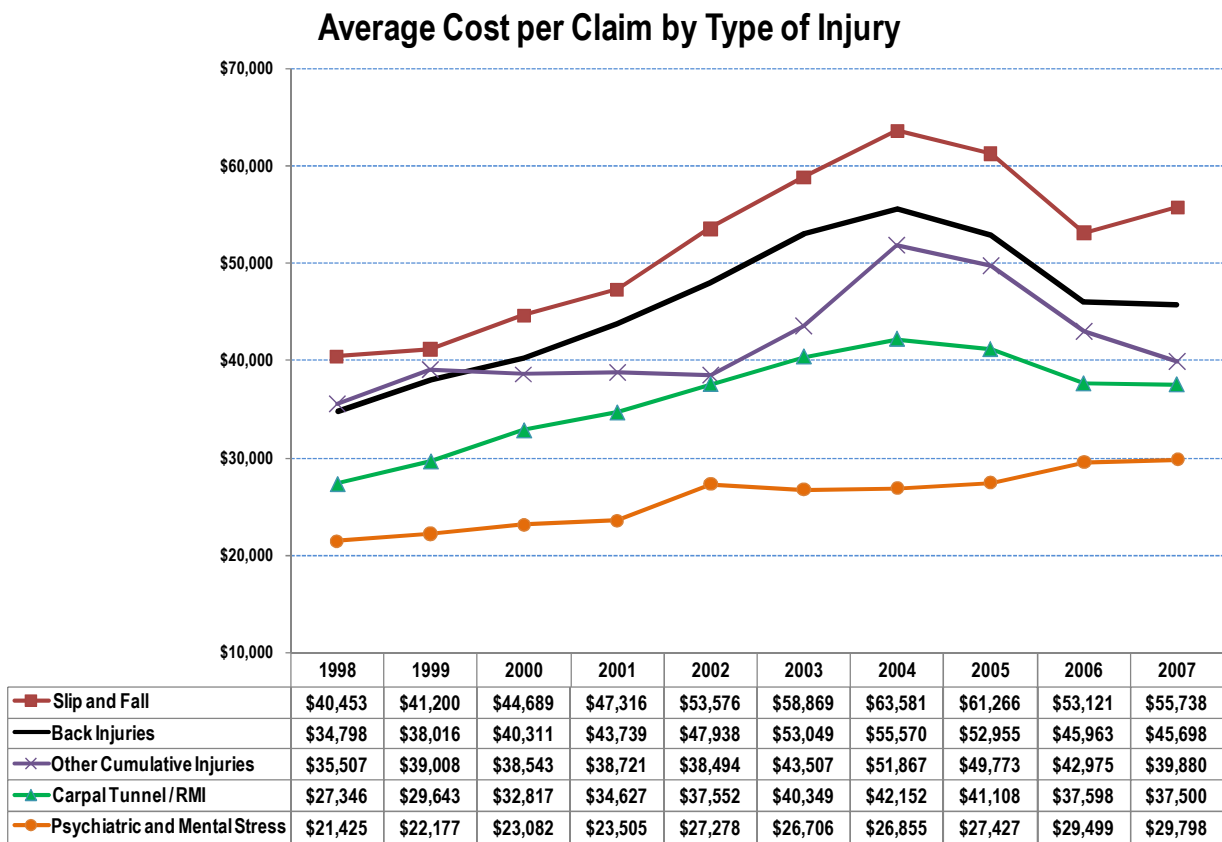
### *Average Cost per Claim by Type of Injury*

As shown in the following chart, from 1998 to 2004, back injuries increased by 59.7 percent and slip and fall injuries by 57.2 percent, followed by carpal tunnel/repetitive motion injuries (RMI) by 54.1 percent.

On the other hand, average costs of psychiatric and mental stress claims appeared to have levelled off through 2001, increased slightly in 2002, been mostly stable through 2005, and increased by 8.6 percent from 2005 to 2007.

From 2004 to 2006, the average costs for all of the types of injuries shown below, with the exception of psychiatric and mental stress, declined.

From 2006 to 2007, the average cost for some types of injuries, such as carpal tunnel/RMI, back injuries, and psychiatric and mental stress, appeared to be leveling off. At the same time, slip and fall injuries increased, and other cumulative injuries decreased slightly.



Data Source: WCIRB

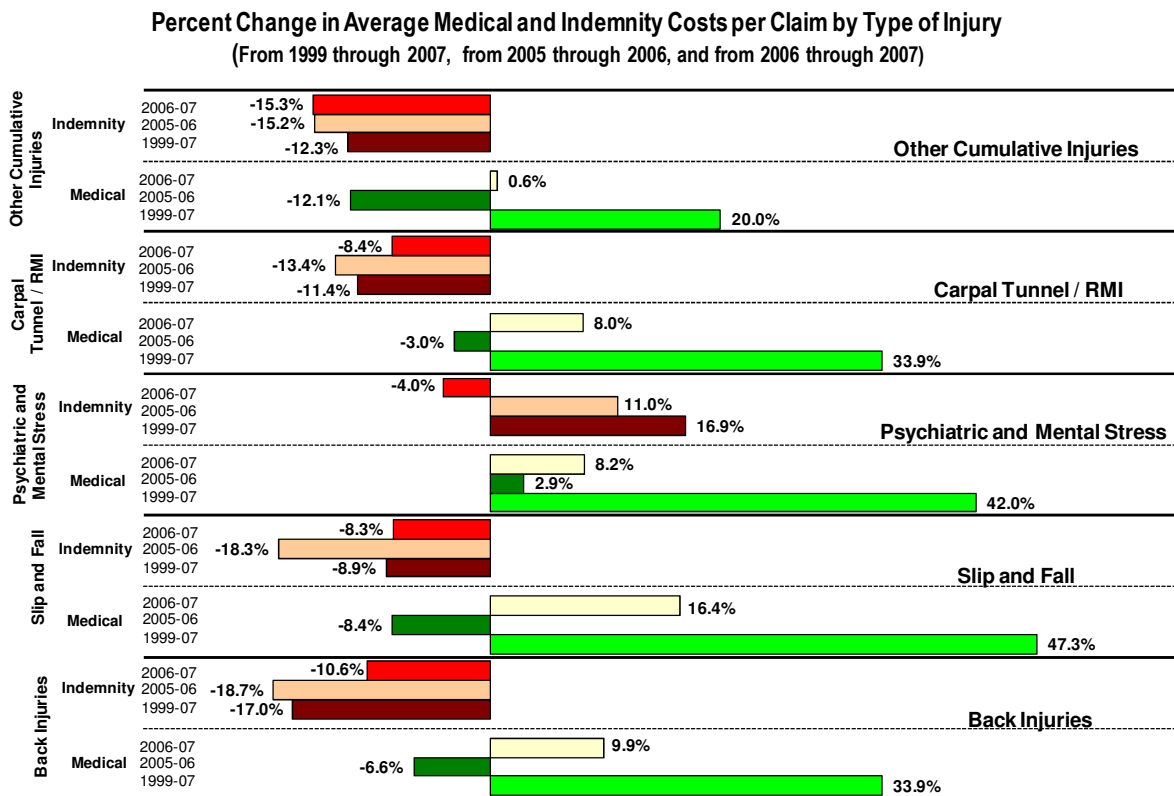
## SYSTEM COSTS AND BENEFITS OVERVIEW

### *Changes in Average Medical and Indemnity Costs per Claim by Type of Injury*

The chart below illustrates the impact of the reforms on selected types of injury. The long-term trend from 1999 to 2007 shows increases in medical costs for all these types of injury. The same trend for indemnity costs shows decreases for all types of injury, excluding the psychiatric and mental stress, as the result of reduction in those indemnity costs for both the 2005-2006 and 2006-2007 periods.

From 2005 to 2006, medical costs fell for every type of injury except psychiatric and mental stress. In the same year, indemnity costs showed decreases for all types of injury, excluding psychiatric and mental stress, with 11 percent increase.

From 2006 to 2007, medical costs increased for every type of injury, the largest being a 16.4 percent increase for slip and fall injuries. In the same year, indemnity costs fell dramatically for every type of injury including the first-time decrease of 4 percent for psychiatric and mental stress.



Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

### **Medical-Legal Expenses**

Changes to the medical-legal process over the years have been intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number of medical-legal evaluations needed to determine the extent of PD. The qualified medical evaluator (QME) designation was intended to improve the quality of medical evaluations in cases where the parties did not select an agreed medical evaluator (AME). Legislation in 1993 attempted to limit workers' compensation judges to approving the PD rating proposed by one side or the other (Labor Code Section 4065, known as "baseball arbitration"). In addition, the 1993 legislation established a presumption in favor of the evaluation by the treating physician (Labor Code Section 4602.9), which was expected to reduce litigation and reduce costs.

In 1995, CHSWC contracted with the Survey Research Center at the University of California (UC), Berkeley, to assess the impact of workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

This ongoing study has determined that during the 1990s, the cost of medical-legal evaluations dramatically improved. As shown in the following discussion, this was due to reductions in all the factors that contribute to the total cost. However, baseball arbitration proved to be impractical and the treating physician's presumption turned out to cost more than it saved. AB 749, enacted in 2002, repealed baseball arbitration and partially repealed the primary treating physician's presumption, except when the worker had pre-designated a personal physician or personal chiropractor for injuries occurring on or after January 1, 2003. This partial repeal was carried further by SB 228 enacted in 2003 to all dates of injury, except in cases where the employee has pre-designated a personal doctor or chiropractor. Finally, in 2004, SB 899 completely repealed the primary treating physician's presumption.

The reforms of SB 899 also changed the medical dispute resolution process in the workers' compensation system by eliminating the practice of each attorney obtaining a QME of his or her own choice. The new reform provisions of 2004 were intended to reduce the number of medical evaluations needed and required that the dispute resolution process through an AME or a single QME applies to all disputes including compensability of claim and PD evaluation.

In cases where attorneys do not agree on an AME, SB 899 limits the attorneys to one QME jointly selected by process of elimination from a state-assigned panel of three evaluators. The new procedure for represented cases applies to dates of injury on or after January 1, 2005. In cases without attorneys, the injured worker selects the QME from the state-assigned panel, similar to the process established since 1989 for non-attorney cases.

After a significant decrease of medical-legal expenses starting in 1989 when legislative reforms restricted the number and lowered the cost of medical-legal evaluations, there was again some increase in average medical-legal costs beginning in the 2000 accident year. In 2005, the average cost of medical-legal evaluations was \$1,162 or 33 percent increase compared to the 2004 accident year and reached its highest level since 1989.

The medical-legal analysis that follows uses the latest 2005 data from the WCIRB Permanent Disability Survey.

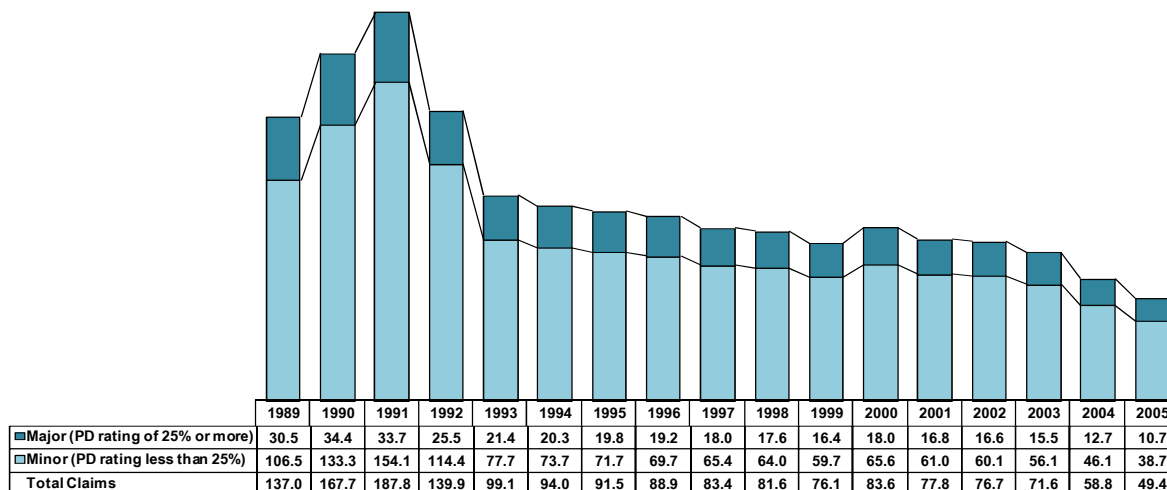
### ***Permanent Disability Claims***

The following chart displays the number of permanent partial disability (PPD) claims during each calendar year since 1989. Through 1993, WCIRB created these data series from Individual Case Report Records submitted as part of the Unit Statistical Report. Since that time, the series has been discontinued, and estimates for 1994 and subsequent years are based on policy year data adjusted to the calendar year and information on the frequency of all claims, including medical-only claims, that are still available on a calendar year basis.

## SYSTEM COSTS AND BENEFITS OVERVIEW

The data presented in the medical-legal section of this report is current and based on the latest available data through 2005.

### PPD Claims at Insured Employers by Year of Injury (Thousands)



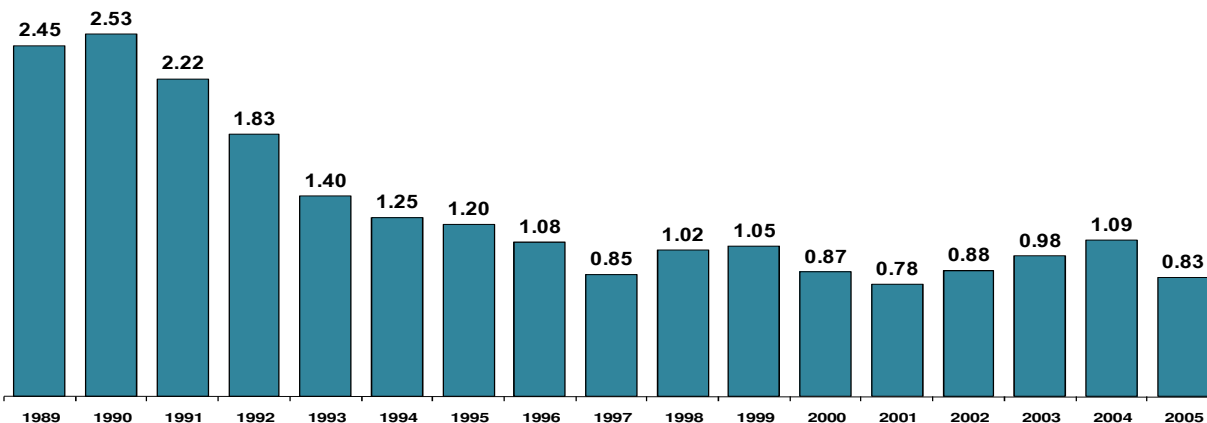
Data Source: WCIRB

### Medical-Legal Evaluations per Claim

The following chart illustrates that the average number of medical-legal evaluations per claim declined from 2.45 evaluations in 1989 to 0.78 in 2001. This decline of 68 percent is attributed to a series of reforms since 1989 and the impact of efforts against medical mills.

Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of evaluations even further. Earlier CHSWC reports evaluating the treating physician presumption did not find that these reforms had significant effect on the average number of evaluations per claim.

### Number of Medical-Legal Evaluations per Workers' Compensation Claim (At 40 months from the beginning of the accident year)



Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS OVERVIEW

The change in the average number of evaluations between 1993 and 1994 was almost entirely the result of improvements that occurred during the course of 1993 calendar year claims. These results were based on smaller surveys done by WCIRB when the claims were less mature. These later data involving a larger sample of surveyed claims suggest that the number of evaluations per claim continued to decline after leveling off between 1993 and 1995.

Between 2001 and 2004, the average number of medical-legal evaluations per claim increased by 29.5 percent. The increase from 2001 to 2004 could be driven by a number of factors including the impact of the new Permanent Disability Rating Schedule (PDRS).

### *Completion of First Medical-Legal Evaluations*

According to WCIRB, the use of the *AMA Guides to the Evaluation of Permanent Impairment* has altered the expected disability award for many kinds of claimed injuries and has led to different economic incentives by the parties. The table below shows the percentages of evaluations completed in the same year as the accident year. A higher number of first medical-legal evaluations were completed in 2004 for the 2004 accident year prior to the PDRS effective 01/01/2005 compared to any other accident year. It is possible that the change in the PDRS has led to more requests for medical-legal evaluations being completed prior to the date of the new schedule.

**Table: Percent of First Medical-Legal Evaluations Completed in the Accident Year**

Accident Year	Percent of First Medical-Legal Evaluations Completed in the Same Year as the Accident Year
2000	21.6%
2001	19.7%
2002	20.1%
2003	18.8%
2004	25.4%
2005	15.7%

The average number of medical-legal evaluations per claim for accident year 2005 decreased by 24 percent compared to 2004 going down to the level of 1997. The decrease in evaluations was most likely due to the SB 899 provisions that instituted a new medical dispute resolution process described above. This new process became effective in April 2004 for unrepresented workers, and was effective for represented workers for dates of injuries on or after January 1, 2005.

### ***Medical-Legal Reporting by California Region***

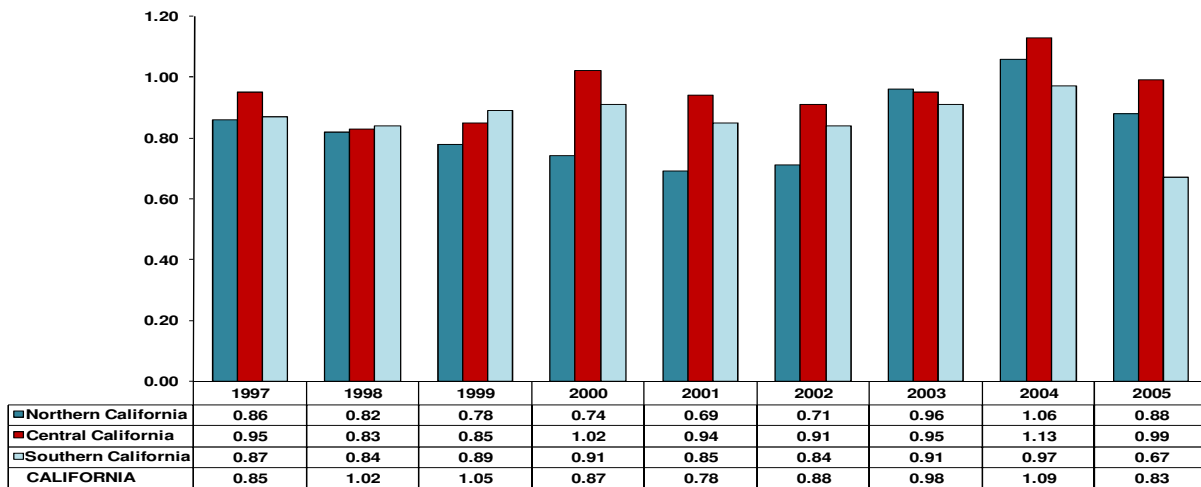
The different regions of California are often thought to have different patterns of medical-legal reporting. The revisions to the WCIRB Permanent Disability Survey, undertaken at the recommendation of CHSWC and instituted for the 1997 accident year, explored new issues. A zip code field was added to analyze patterns in different regions.

The following chart demonstrates the frequency with which medical-legal evaluations were used between 1997 and 2005 in different regions. The period from 1997 to 1999 did not indicate any significant difference in frequency across the State's major regions. However, as the number of evaluations per claim continued to decline between 2000 and 2002, the differences between regions became more pronounced. Between 2002 and 2004, the average number of medical-legal evaluations per claim for each region increased, and then decreased again from 2004 to 2005, with the lowest number of medical-legal evaluations per claim (0.67) in nine years for Southern California due to SB 899.



## SYSTEM COSTS AND BENEFITS OVERVIEW

**Average Number of Medical-Legal Evaluations per Claim by Region  
(at 34 months after beginning of accident year)**



Data Source: WCIRB

Different regions of California have different patterns of medical-legal reporting. Also, regions with a higher share of workers' compensation claims in the system have a bigger impact on the average number of medical-legal evaluations per claim and average cost of medical-legal evaluations in the State. As the table below indicates, the Southern California region has the highest number of workers' compensation claims in the system, followed by the Northern California region.

Usually, the Southern California region had higher numbers for both the average cost per evaluations and the average number of evaluations per claim than the Northern California region. However, starting with 2003, the number of medical-legal evaluations per claim in the Northern California region grew higher than in the Southern California region. This pattern repeated in 2005, when the average number of evaluations per claim for the Southern California region decreased to 0.68, lowering the average number of evaluations per claim in California to the level of the 1997 accident year. The number of medical-legal evaluations per claim in the Central California region was the highest among all three regions in 2000-2002, and excluding only 2003, again in 2004-2005.

Share of each region in total number of claims in random samples			
	2003 1 <sup>st</sup> level	2004 1 <sup>st</sup> level	2005 1 <sup>st</sup> level
South	58.6%	58.1%	63.1%
Central	16.5%	16.3%	13.5%
North	24.9%	25.7%	23.4%

### **Average Cost per Medical-Legal Evaluation**

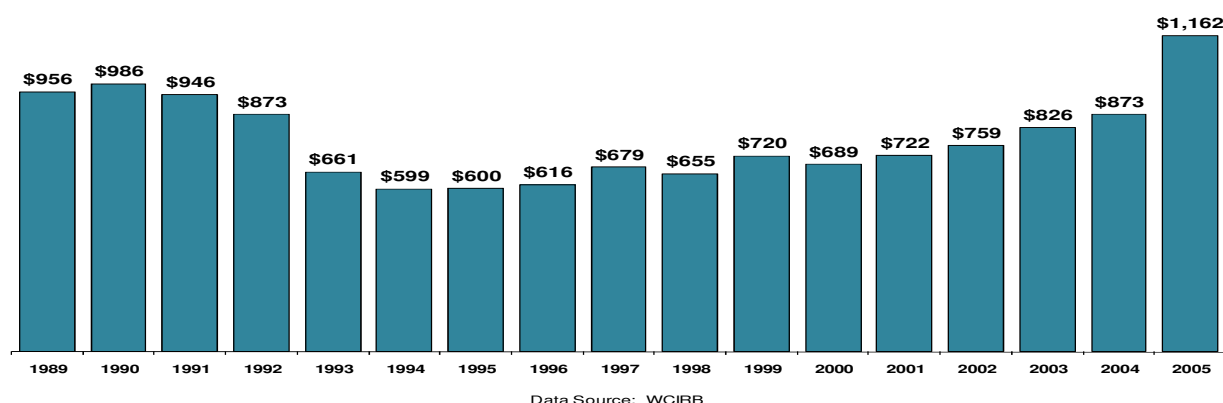
The average cost of medical-legal evaluation per claim declined from 1990 to the mid-1990s and then increased from the mid-1990s to 2000 by 15 percent. Between 2000 and 2004, the average cost of a medical-legal evaluation increased to the same level as in 1992, an increase of 27 percent.

There are two reasons why the average cost per medical-legal evaluation has declined from 1990 to 1995. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which medical-legal evaluations are reimbursed. These restrictions were introduced in early 1993 and enforced at the beginning of August 1993.

## SYSTEM COSTS AND BENEFITS OVERVIEW

Second, during this period, the average cost of a medical-legal evaluation was also being affected by the frequency of psychiatric evaluations. On average, psychiatric evaluations are the most expensive evaluations by specialty of provider. The relative portion of all evaluations that is made up of psychiatric evaluations has declined since hitting a high during 1990-1991, leading to a substantial improvement in the overall average cost per evaluation.

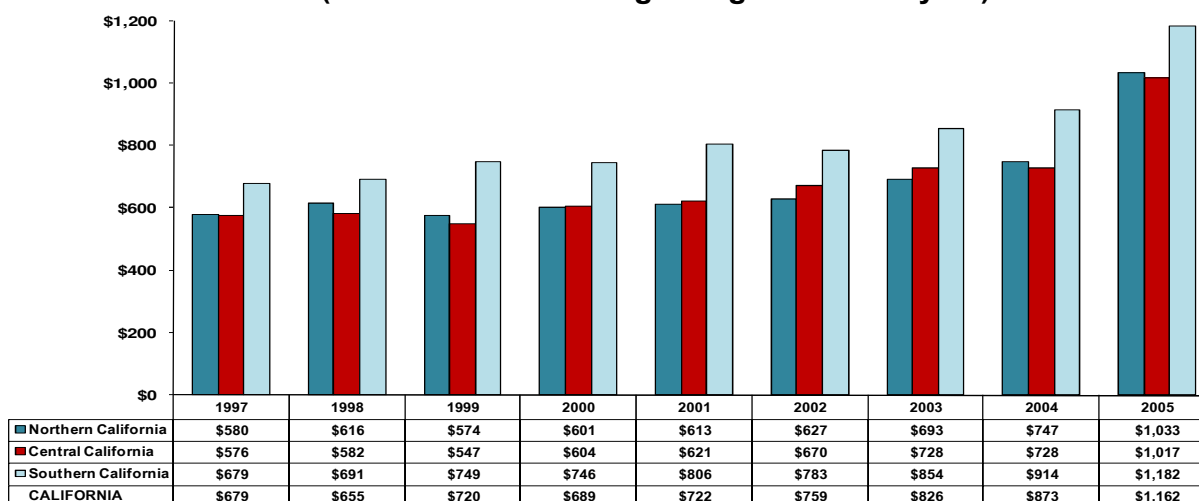
### Average Cost of a Medical-Legal Evaluation (Evaluated at 40 months of accident year)



In 2005 the average cost of a medical-legal evaluation increased by 33 percent compared to 2004 medical-legal evaluations and reached its highest level since 1989.

Since the mid-1990s, the average cost of a medical-legal evaluation has increased, even though the reimbursement under the Official Medical Fee Schedule (OMFS) changed since 1993.<sup>8</sup> The revised PD Survey by WCIRB includes additional questions that reveal some of the potential causes of this increase in costs. The changes indicate various types of fee schedule classifications as well as geography factors.<sup>9</sup>

### Average Cost of a Medical-Legal Evaluation by Region (at 34 months after beginning of accident year)



<sup>8</sup> The new Medical-Legal Fee Schedule became effective for dates of service on or after July 1, 2006.

<sup>9</sup> Issues for injury years before 1997 cannot be examined because the WCIRB survey revision of that year prevents comparisons.

## SYSTEM COSTS AND BENEFITS OVERVIEW

The survey data show that, on average, evaluations done in the Southern California region have always been substantially more expensive. Increases in the average cost are being driven by claims in the Southern California region as can be seen from the table below.

**Table: Regional Contributions to the Increase of the Average Medical-Legal Costs: 2000-2005**

Region	Distribution of Medical-Legal Evaluations by Region in 2000	Distribution of Medical-Legal Evaluations by Region in 2005	Change in Average Cost 2000-2004	Contribution of Each Region to the Average Cost
Southern California	58.6%	55.7%	\$576	68%
Central California	16.5%	17.4%	\$414	15%
Northern California	24.5%	26.9%	\$286	16%

### *Cost Drivers*

The primary cost driver for California and its Southern region is not the price paid for specific types of evaluations. Rather, the mix of codes under which the evaluations are billed has changed to include a higher percentage of the most complex and expensive evaluations and fewer of the least expensive type.<sup>10</sup> The two tables below show the costs and description from the Medical-Legal Fee Schedule.

**Table: Medical-Legal Evaluation Cost for Dates of Service before July 1, 2006<sup>11</sup>**

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/ Supplemental	\$250
ML-102 Basic	\$500
ML-103 Complex	\$750
ML-104 Extraordinary	\$200/hour

**Table: Medical-Legal Evaluation Cost for Dates of Service on or after July 1, 2006**

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/Supplemental	\$62.50/15 minutes or \$250/hr
ML-102 Basic	\$625
ML-103 Complex	\$937.50
ML-104 Extraordinary	\$62.50/15 minutes or \$250/hr

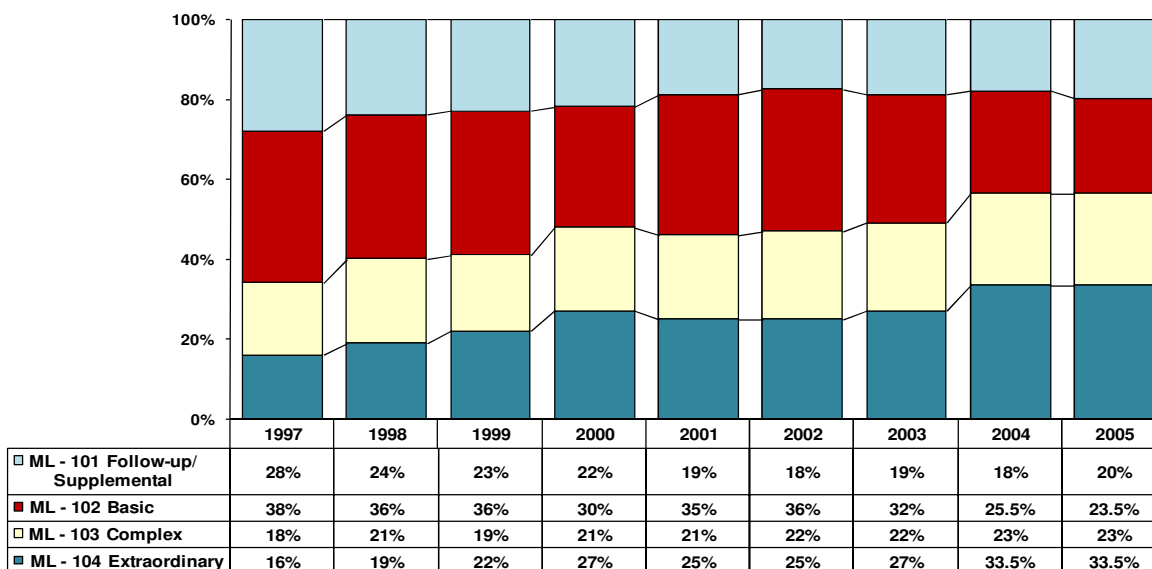
<sup>10</sup> WCIRB also noted that much of the increase in the average cost of a medical-legal evaluation is attributable to increases in a proportion of more complex medical-legal evaluations. Claims Subcommittee meeting minutes for July 28, 2008.

<sup>11</sup> Please note that Agreed Medical Evaluators receive 25 percent more than the rates shown in both of the tables.

## SYSTEM COSTS AND BENEFITS OVERVIEW

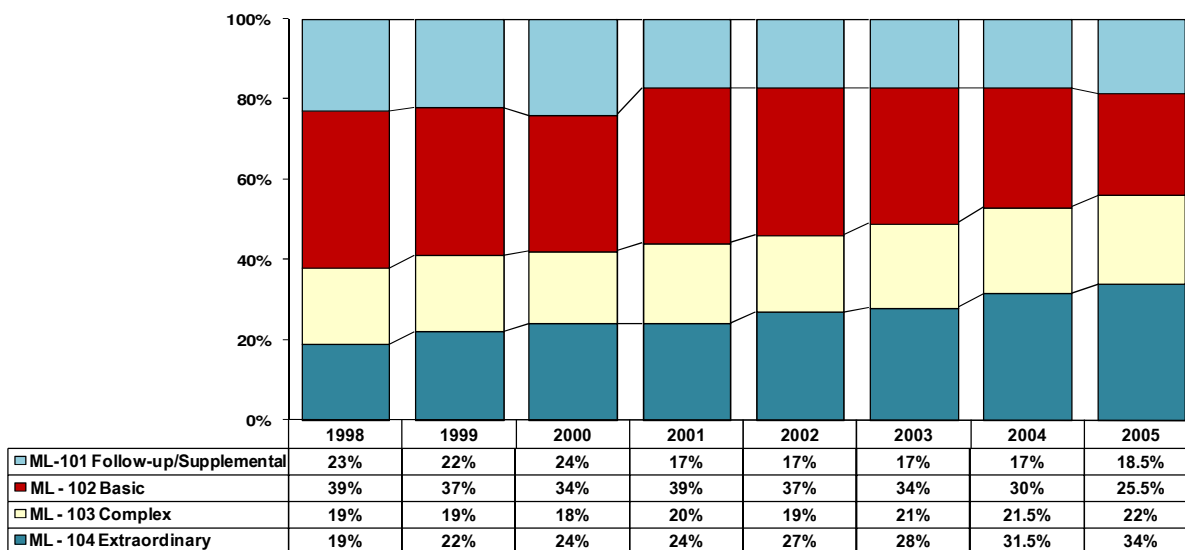
The following two charts indicate that the distribution of evaluations both in the Southern California region and California as a whole has shifted away from ML-101 evaluations to include a higher percentage of ML-104 evaluations with “Extraordinary” complexity. Evaluations with “Extraordinary” complexity increased from 16 percent to 33.5 percent in the Southern California region and from 19 percent to 34 percent in all regions from 2000 to 2005.

**Distribution of Medical-Legal Evaluations by Type  
(Southern California)**



Data Source: WCIRB

**Distribution of Medical-Legal Evaluations by Type (California)**

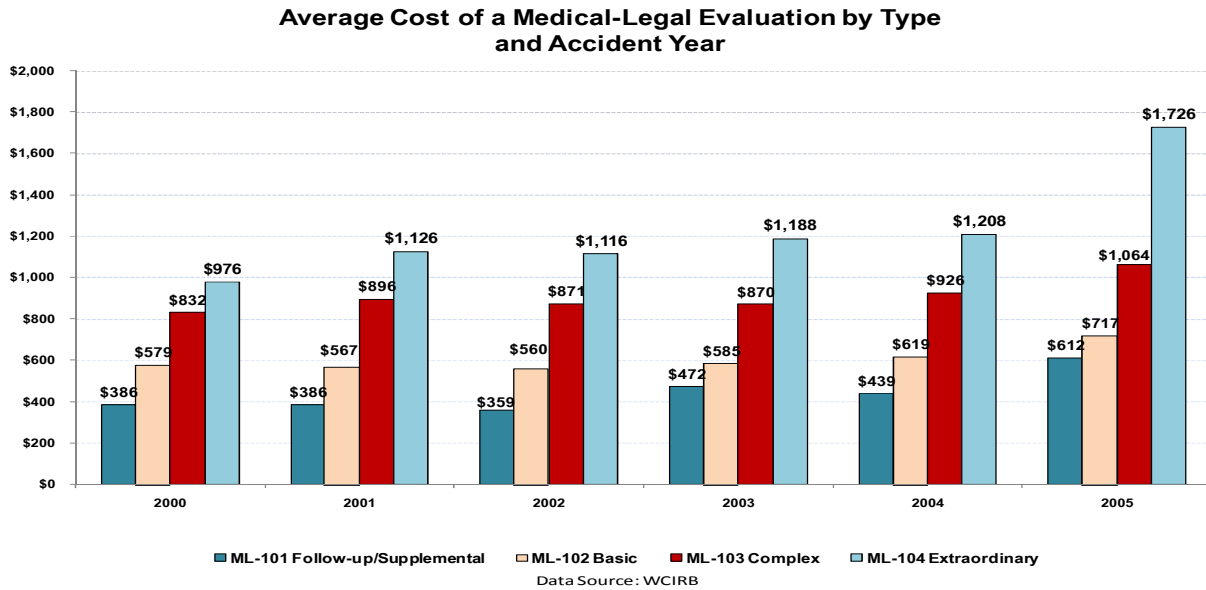


Data Source: WCIRB

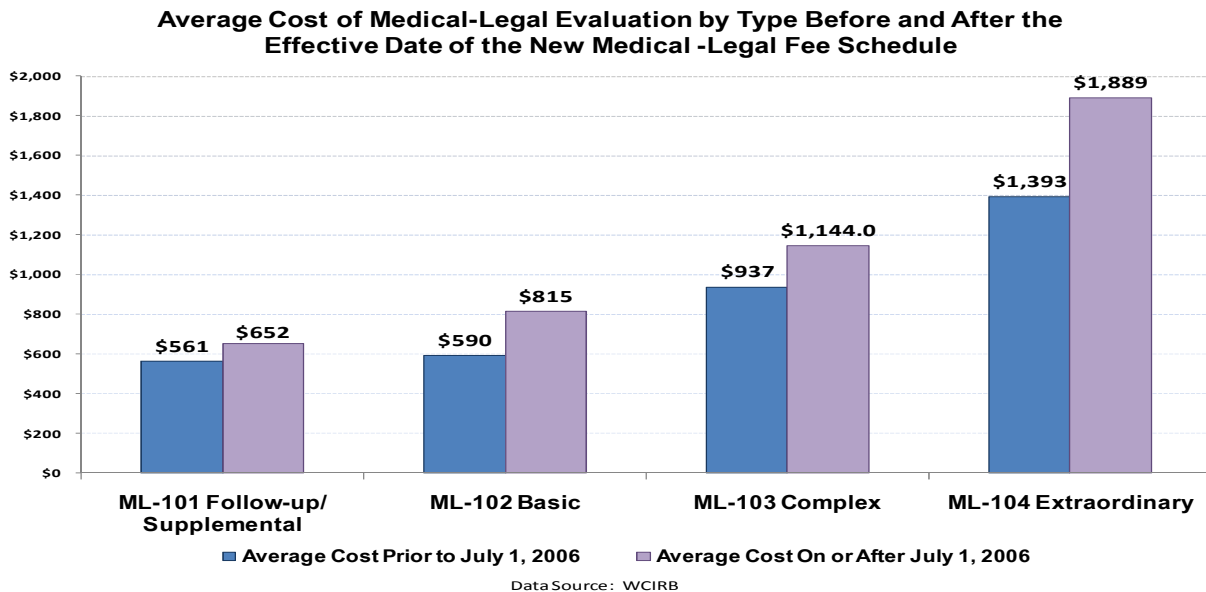
## SYSTEM COSTS AND BENEFITS OVERVIEW

Increases to the medical-legal fee schedules for dates of services on or after July 1, 2006, could have also contributed to the higher average cost per evaluation. Medical-legal evaluations dated on or after July 1, 2006, made up about 37.7 percent of evaluations in the 2005 accident year. The chart below shows that the average cost per evaluation in each type of evaluation is higher in the 2005 accident year sample compared to the 2000 accident year. The biggest increases are for the Complex and Extraordinary cases.

In addition, the medical-legal evaluations in the 2005 accident year had both a higher average cost of Extraordinary evaluations (\$976 and \$1,726 respectively) and a higher share of Extraordinary evaluations (24 percent and 34 percent respectively) than in accident year 2000.



The chart below shows that the average cost of Extraordinary medical-legal evaluations increased by 29 percent after July 1, 2006, when the new Medical-Legal Fee Schedule became effective.



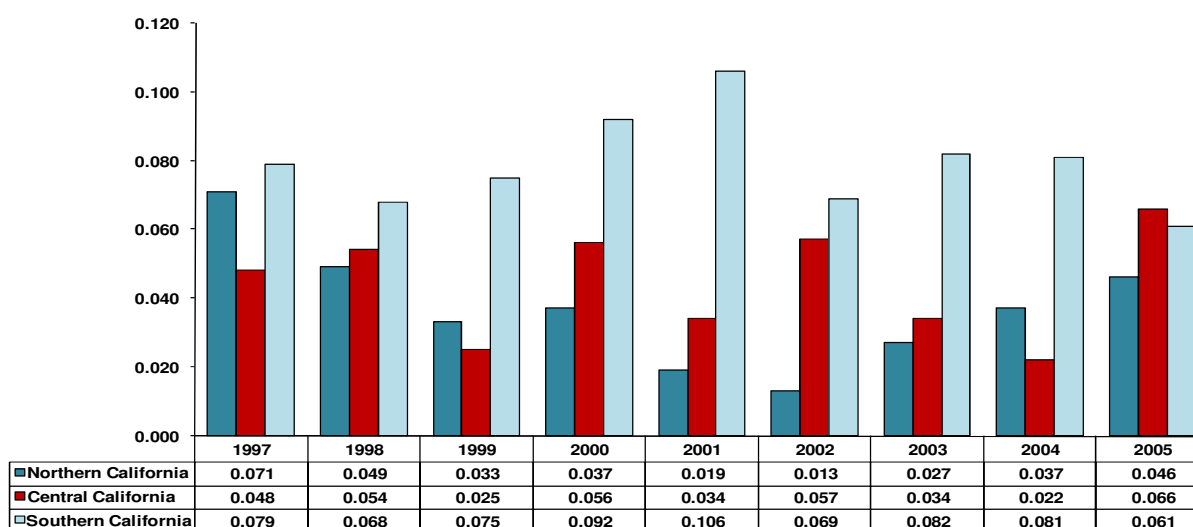
## SYSTEM COSTS AND BENEFITS OVERVIEW

Psychiatric evaluations are nearly always billed under the ML-104 code that is the most expensive.

Another possible explanation for the differing trends in the average number of medical-legal evaluations per claim both in California and its regions and the increasing frequency of the most Complex evaluations in California is that psychiatric evaluations increased from 6.4 percent of total medical-legal evaluations in 2004 to 7.7 percent in 2005. The chart below indicates a 200 percent increase in psychiatric evaluations per report in the Central California region and a 24.3 percent increase in psychiatric evaluations per report in the Northern California region. There was a 24.7 percent decrease in psychiatric evaluations per claim in the Southern California region.

At the same time, the average cost of a psychiatric evaluation increased by 32.5 percent, from \$1,775 in 2004 to \$2,351 in 2005, eliminating the effect of the decrease in psychiatric evaluations in the Southern California Region.

**Average Number of Psychiatric Evaluations  
per PPD Claim by Region**



Data Source: WCIRB

### ***Total Medical-Legal Cost Calculation***

Total medical-legal costs are calculated by multiplying the number of PPD claims by the average number of medical-legal evaluations per claim and by the average cost per medical-legal evaluation:

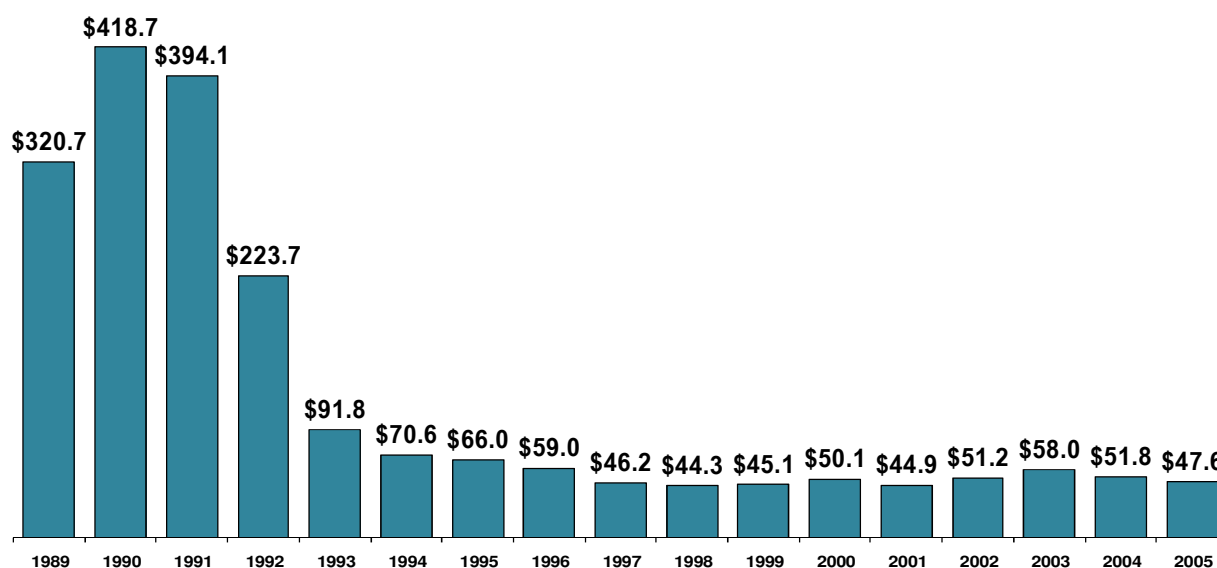
$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} \times \text{Average Evaluations /Claim} \times \text{Average Cost/Evaluation}$$

## SYSTEM COSTS AND BENEFITS OVERVIEW

### Medical-Legal Costs

During the 1990s, the cost of medical-legal evaluation improved dramatically. For the insured community, the total cost of medical-legal evaluation performed on PPD claims by 40 months after the beginning of the accident year declined from a high of \$419 million in 1990 to an estimated \$47.6 million for injuries occurring in 2005. This is an 88.6 percent decline since 1990.

### Medical-Legal Costs on PPD Claims at Insured Employers (In Million \$, 40 months after beginning of accident year)



Data Source: WCIRB

### Sources of Improvement in Medical-Legal Costs

The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure during the 1990s. As discussed in the previous sections, this substantial decline in total medical-legal costs for insurers results from significant decreases in all of the components of the cost structure. The source of savings can be attributed in equal proportion to the reduction in the number of evaluations performed per claim and the decline in PPD claim frequency.

- i. CHSWC estimate based on Employment Development Department report, as above, showing 1,265,268 businesses. Of these, 856,879 were businesses with 0 to 4 employees. For this estimate, half of those businesses are assumed to have no employees subject to workers' compensation.  $1,265,268 - (856,879/2) = 836,828$ .
- ii. US Department of Commerce, Bureau of Economic Analysis, <http://www.bea.gov/regional/gsp/>, accessed July 24, 2008.
- iii. The latest year for which WCIS reports are reasonably complete. Data are from the DWC report from the WCIS database, "Workers' Compensation Claims (in 000's) by Market Share with Eight Year History and Cumulative Totals, 2000-2007," April 25, 2008, <http://www.dir.ca.gov/dwc/WCIS/WCC-MarketShare.pdf>. Due to delayed reporting, the number of claims reported to WCIS for a given year may grow by more than 5 percent between the second and the fourth years after the end of the accident year. Boden, Leslie I. and Al Ozonoff, *Reporting Workers' Compensation Injuries in California: How Many are Missed?* (2008). CHSWC report.
- iv. Data for 2006 are from the Division of Workers' Compensation (DWC) report from the WCIS database, "Workers' Compensation Claims (in 000's) by Market Share with Eight Year History and Cumulative Totals, 2000-2007," April 25, 2008. From 2002 through 2006, the average shares varied by no more than  $\pm 0.5/0.4$  for the insured share,  $\pm 0.7/-0.5$  for the self-insured share, and  $\pm 0.2$  for the State. CHSWC omits the years 2000 and 2001 from these averages because reasonably complete reporting was not achieved until mid-2001.

## **WORKERS' COMPENSATION SYSTEM PERFORMANCE**

### **INTRODUCTION**

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the overall performance of the health and safety and workers' compensation systems to determine whether they meet the State's Constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

In this section, CHSWC has attempted to provide performance measures to assist in evaluating the system impact on everyone, particularly workers and employers.

Through studies and comments from the community, as well as administrative data, CHSWC has compiled the following information pertaining to the performance of California's systems for health and safety and workers' compensation. Explanations of the data are included with the graphs.

#### **Workers' Compensation Appeals Board (WCAB) Workload**

- DWC Opening Documents

- DWC Hearings

- DWC Decisions

- DWC Lien Decisions

- Vocational Rehabilitation / Supplemental Job Displacement Benefit (SJDB)

- DWC Audit and Enforcement Program

- Disability Evaluation Unit

- Medical Provider Networks and Healthcare Organizations

- Information and Assistance Unit

- Uninsured Employer Fund

- Adjudication Simplification Efforts

- DWC Information System

- Carve-outs – Alternative Workers' Compensation Systems

- Anti-Fraud Efforts

### **WCAB WORKLOAD**

#### ***Division of Workers' Compensation Opening Documents***

Three types of documents open a Workers' Compensation Appeals Board (WCAB) case. The following chart shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the Division of Workers' Compensation (DWC).

The number of documents filed with DWC to open a WCAB case on a workers' compensation claim fluctuated during the early and mid-1990s, leveled off during the late 1990s, increased slightly between 2000 and 2003, and decreased between 2003 and 2007.

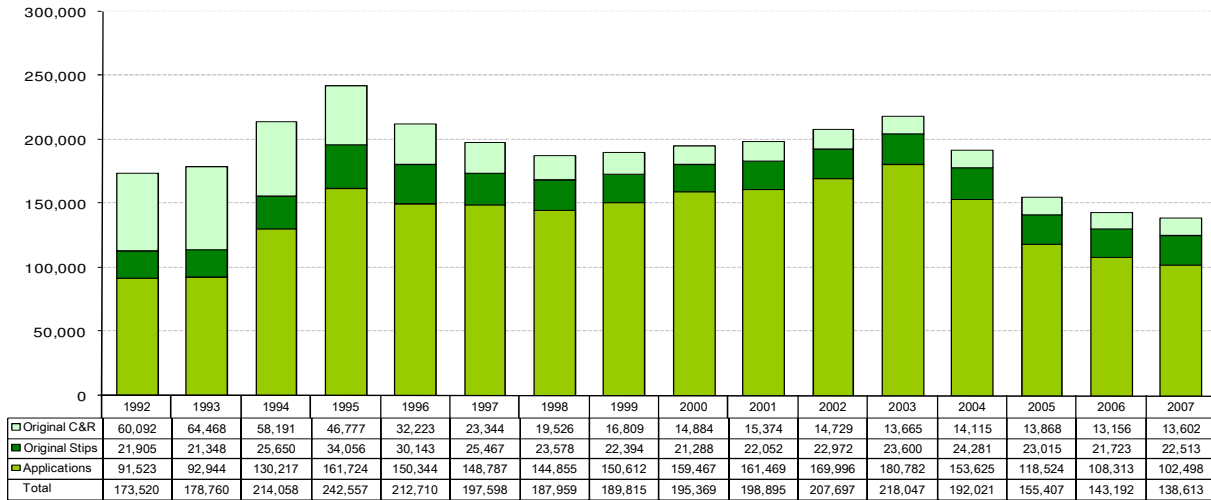
The period from 1992 to 1993 shows leveling off in all categories of case-opening documents, followed by one of substantial increases in Applications, slight increases in Stips, and significant decreases in C&Rs during the period from 1993 to 1995. Through 2003, C&Rs continued to decline, while Applications increased. Between 2003 and 2007, Applications declined substantially, and C&Rs decreased slightly.



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

2007 was the lowest year since 1992 for all three documents combined, with C&Rs nearing a historic low in 2006 followed by a slight increase in 2007.

### DWC Opening Documents

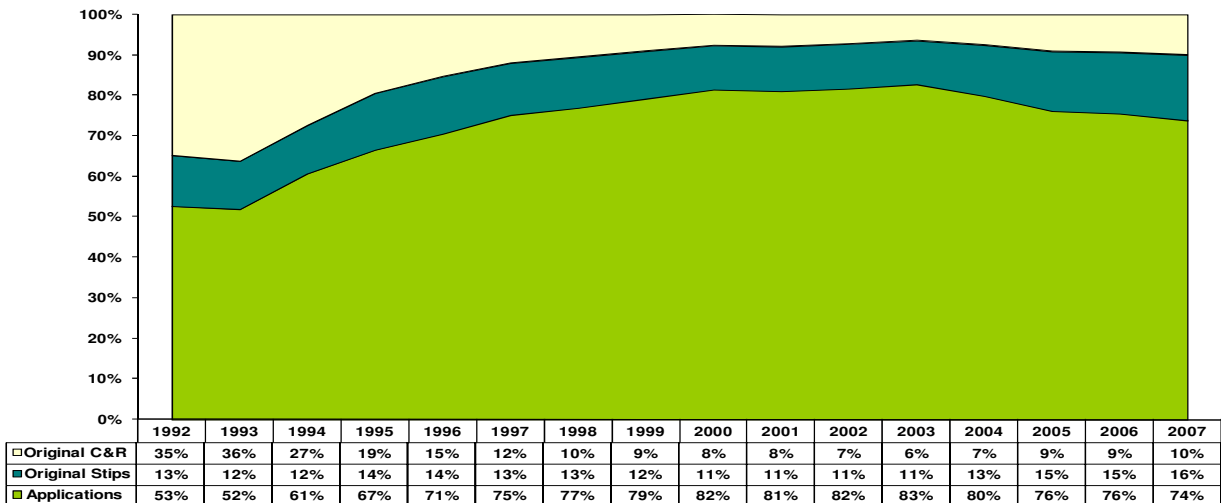


Data Source: DWC

### Mix of DWC Opening Documents

As shown in the following graph, the proportion or mix of the types of case-opening documents received by DWC varied during the 1990s. Applications initially dropped slightly from 1992 to 1993, reflecting a one percent increase in C&Rs. The proportion of Applications was steady from 1992 to 1993, rising again through 2003, and declining slightly from 2003 to 2007. The proportion of original (case-opening) Stips and original C&Rs declined slightly from 1999 to 2003 and then increased from 2003 to 2007.

### Percentage by Type of Opening Documents



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

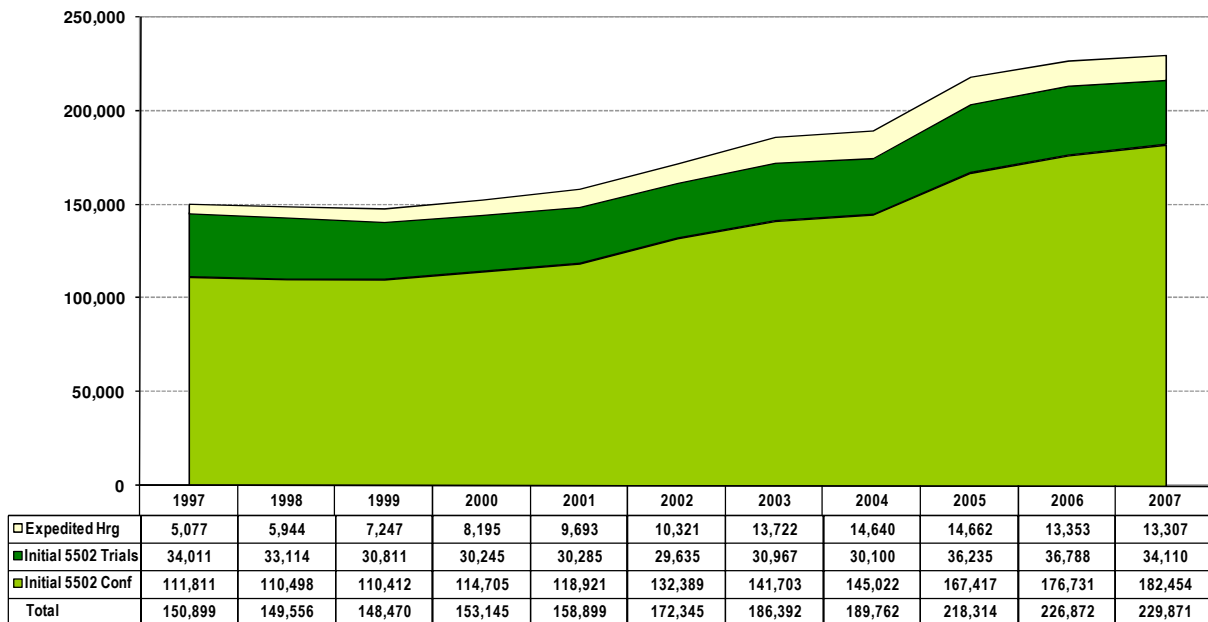
### *Division of Workers' Compensation Hearings*

#### *Numbers of Hearings*

The graph below indicates the numbers of different types of hearings held in DWC from 1997 through 2007. While the total number of hearings held increased by 52 percent from 1997 to 2007, the number of expedited hearings grew by about 162 percent during the same period.

Expedited hearings for certain cases, such as determination of medical necessity, may be requested pursuant to Labor Code Section 5502(b). Per Labor Code Section 5502(d), Initial 5502, conferences are to be conducted in all other cases within 30 days of the receipt of a Declaration of Readiness (DR), and Initial 5502. Trials are to be held within 75 days of the receipt of a DR if the issues were not settled at the Initial 5502 Conference.

### DWC Hearings Held



Data Source: DWC

#### *Timeliness of Hearings*

California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by DWC on WCAB cases. In general:

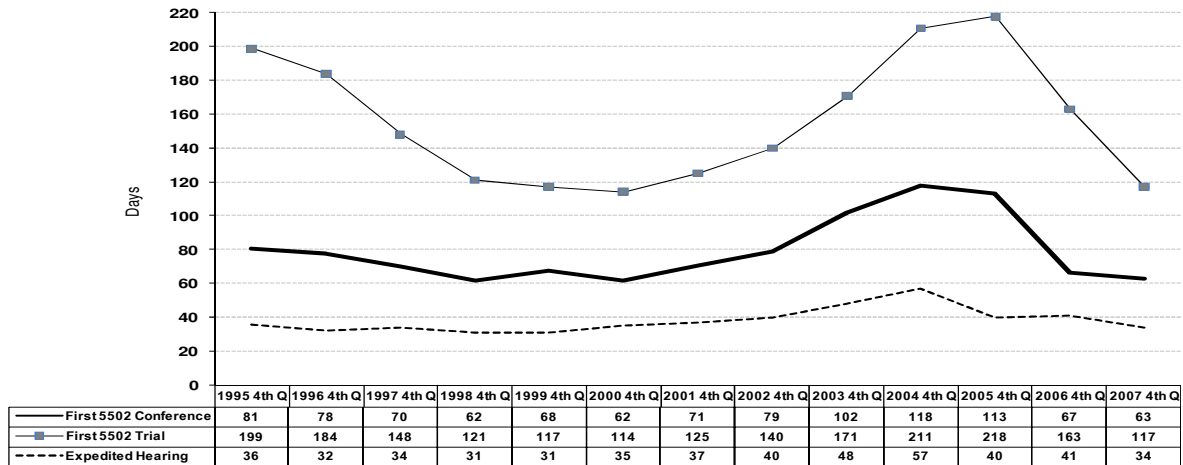
- A conference is required to be held within 30 days of the receipt of a request in the form of a DR.
- A trial must be held either within 60 days of the request or within 75 days if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DR.

As the following chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid-1990s to late-1990s and then remained fairly constant. From 2000 to 2004, all of the average elapsed times have increased from the previous year's quarter and none were within the statutory requirements. However, between 2005 and 2007, the average elapsed time from the request to a trial

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

decreased by 46 percent. The average elapsed time for conferences decreased by 44 percent, while the average time for expedited hearings decreased by 15 percent.

### Elapsed Time in Days from Request to DWC Hearing



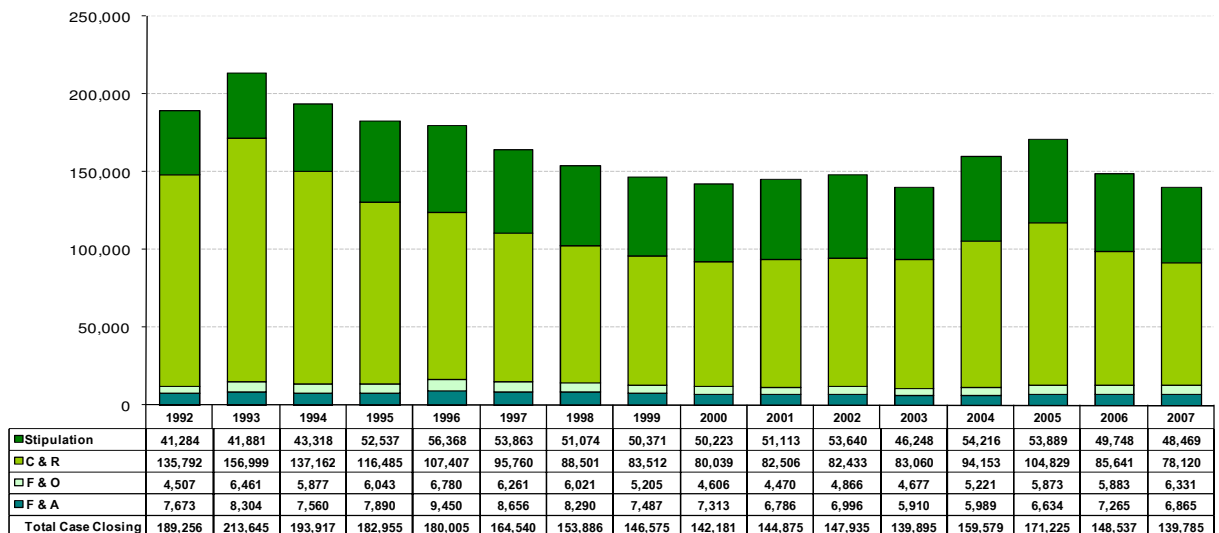
Source: DWC

## Division of Workers' Compensation Decisions

### DWC Case-Closing Decisions

The number of decisions made by DWC that are considered to be case-closing have declined overall during the 1990s, with a slight increase from 2000 to 2002, followed by a decrease in 2003, and then an increase between 2003 and 2005. In 2007, the total for case-closing decisions decreased by 18 percent compared to 2005.

### DWC Case-Closing Decisions



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

The preceding chart shows that:

- The numbers of Findings and Awards (F&As) have shown an overall decline of 10.5 percent from 1992 to 2007.
- Findings and Orders (F&Os) increased during the first part of the decade, declined to the original level in 2000, decreased slightly from 2000 to 2001, and increased again between 2001 and 2007.
- Stips were issued consistently throughout the decade. The numbers of Stips issued leveled off from 1992 to 1994, rose again in 1995 and 1996, remained stable through 2000, increased slightly in 2001 and 2002, decreased in 2003, increased between 2003 and 2004, and decreased between 2004 and 2007.
- The use of C&Rs increased by 15.6 percent from 1992 to 1993. C&Rs declined steadily by 49 percent from 1993 through 2000, increased in 2001, remained stable in 2002 and 2003, increased by 26.2 percent between 2003 and 2005, and decreased by 25.5 percent between 2005 and 2007.

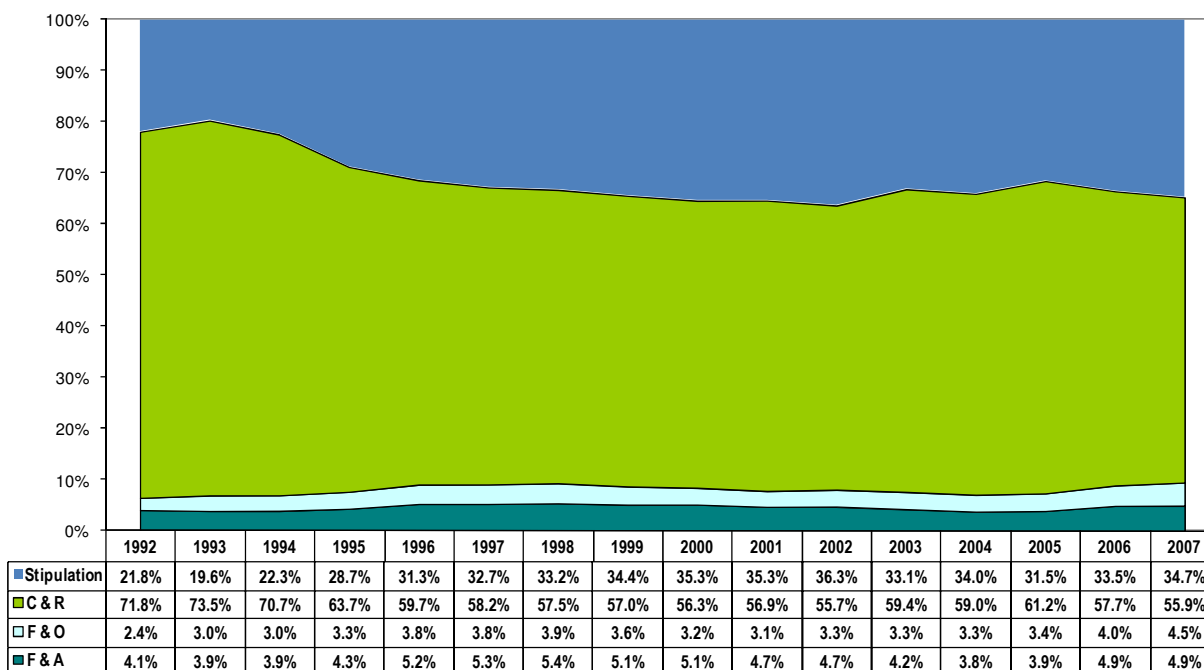
### Mix of DWC Decisions

As shown on the charts on the previous page and this page, again, the vast majority of the case-closing decisions rendered during the 1990s were in the form of a WCAB judge's approval of Stips and C&Rs which were originally formulated by the case parties.

During the period from 1993 through the beginning of 2000 and beyond, the proportion of Stips rose, while the proportion of C&Rs declined. This reflects the large decrease in the issuance of C&Rs through the 1990s.

Only a small percentage of case-closing decisions evolved from an F&A or F&O issued by a WCAB judge after a hearing.

### DWC Decisions: Percentage Distribution by Type of Decisions



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### *Division of Workers' Compensation Lien Decisions*

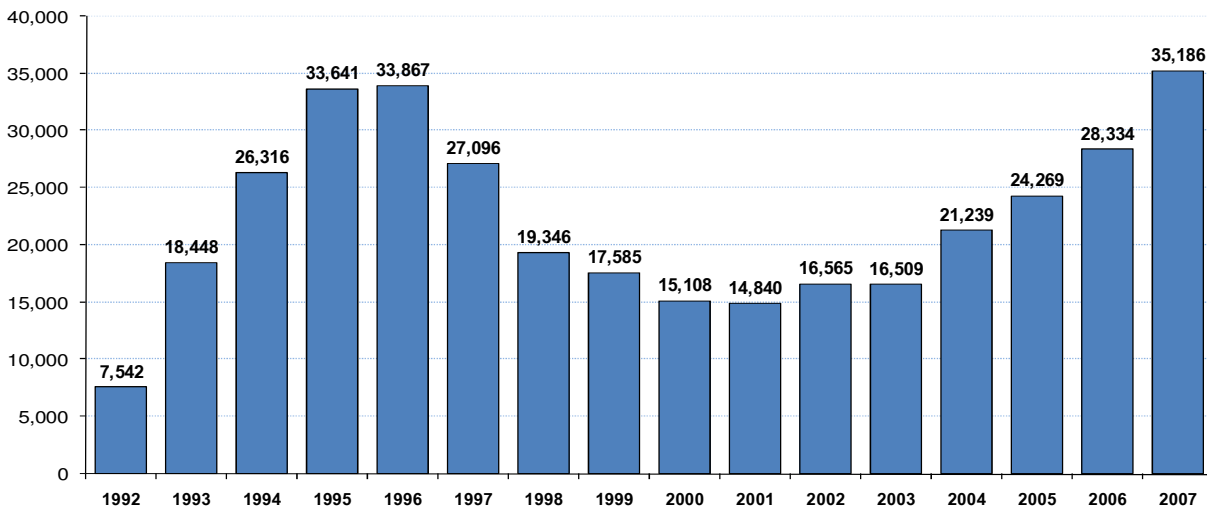
DWC has been dealing with a large backlog of liens filed on WCAB cases. Many of the liens have been for medical treatment and medical-legal reports. However, liens are also filed to obtain reimbursement for other expenses:

- The Employment Development Department (EDD) files liens to recover disability insurance indemnity and unemployment benefits paid to industrially injured workers.
- Attorneys have an implied lien during representation of an injured worker. If an attorney is substituted out of a case and seeks a fee, the attorney has to file a lien.
- District Attorneys file liens to recover spousal and/or child support ordered in marital dissolution proceedings of the injured worker.
- A landlord or grocer will occasionally claim a lien for living expenses of the injured worker or his/her dependents.
- Although relatively rare now, a private disability insurance policy will occasionally file a lien on workers' compensation benefits on the theory that the proceeds from the benefits were used for living expenses of the injured worker.
- Some defendants will file liens in lieu of petitions for contribution where they have paid or are paying medical treatment costs to which another carrier's injury allegedly contributed.
- Liens are sometimes used to document recoverable (non-medical) costs, e.g., photocopying of medical records, interpreters' services and travel expenses.

Effective July 1, 2006, budget trailer bill language in Assembly Bill (AB) 1806 repealed the lien filing fee in Labor Code Section 4903.05 and added Section 4903.6 to preclude the filing of frivolous liens at DWC district offices. Labor Code Section 4903.05, originally added by Senate Bill (SB) 228, had required that a filing fee of \$100 be charged for each initial lien filed by a medical provider, excluding the Veterans Administration, the Medi-Cal program, or public hospitals.

The following chart shows a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

**DWC Lien Decisions**



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### VOCATIONAL REHABILITATION / RETURN TO WORK / SUPPLEMENTAL JOB DISPLACEMENT BENEFIT (SJDB) CALENDAR YEAR 2006 DATA<sup>12</sup>

The number of:

- Opening documents by type and total – 20,985 new and 1,272 reopened
- Plans (new) 1,465
- Disputes (new) 9,497
- Settlements (new) 10,023

These numbers account for the 20,985 new cases only:

- Plans submitted for unrepresented employees and approved = 1,290
- Plans submitted for represented employees and approved = 5,110

Closures by types and totals:

- Employee completed plan and returned to work = 5,226
- Employee completed plan and did not return to work = 3,282
- Employee settled prospective vocational rehabilitation = 16,375

Dispute Resolution & Conferences = 11,524.

The Rehabilitation Unit issued 17,005 Determinations for calendar year (CY) 2006.

Appeals = 869 or 5 percent of the Unit's Determinations were appealed, and less than 1 percent was overturned by the WCAB district offices.

Open cases as of January 1, 2006 = 68,354, and on December 31, 2006, there were 56,999 open cases.

Return to work/modified/alternative work (Pre 2004 DOI) CY 2006 totals = 2,470.

Return to work (Post 2004 DOI) regular/-modified/-alternative work CY 2006 totals = 6,760.

SJDB disputes for CY 2006 = 243.

### DIVISION OF WORKERS' COMPENSATION AUDIT AND ENFORCEMENT PROGRAM

#### ***Background***

The 1989 California workers' compensation reform legislation established an audit function within DWC to monitor the performance of workers' compensation insurers, self-insured employers, and third-party administrators to ensure that industrially injured workers are receiving proper benefits in a timely manner.

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.

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<sup>12</sup> Calendar year 2007 data was not available from DWC due to EAMS transition issues.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### ***Assembly Bill 749 Changes to the Audit Program***

Assembly Bill (AB) 749, effective January 1, 2003, resulted in major changes to California workers' compensation law and mandated significant changes to the methodologies for file selection and assessment of penalties in the audit program.

Labor Code Sections 129 and 129.5 were amended to assure that each audit unit will be audited at least once every five years and that good performers will be rewarded. A profile audit review (PAR) of every audit subject will be done at least every five years. Any audit subject that fails to meet a profile audit standard established by the Administrative Director (AD) of the DWC will be given a full compliance audit (FCA). Any audit subject that fails to meet or exceed the FCA performance standard will be audited again within two years. Targeted PARs or FCAs may also be conducted at any time based on information indicating that an insurer, self-insured employer, or third-party administrator is failing to meet its obligations.

To reward good performers, profile audit subjects that meet or exceed the PAR performance standard will not be liable for any penalties but will be required to pay any unpaid compensation. FCA subjects that meet or exceed standards will only be required to pay penalties for unpaid or late paid compensation, as well as any unpaid compensation.

Labor Code Section 129.5(e) was amended to provide for civil penalties up to \$100,000 if an employer, insurer, or third-party administrator has knowingly committed or (rather than "and") has performed with sufficient frequency to indicate a general business-practice act discharging or administering its obligations in specified improper manners. Failure to meet the FCA performance standards in two consecutive FCAs will be rebuttably presumed to be engaging in a general business practice of discharging and administering compensation obligations in an improper manner.

Review of the civil penalties assessed is obtained by written request for a hearing before WCAB rather than by application for a writ of mandate in the Superior Court. Judicial review of the Board's F&O is as provided in Sections 5950 et seq.

Penalties collected under Section 129.5 and unclaimed assessments for unpaid compensation under Section 129 are credited to the Workers' Compensation Administration Revolving Fund (WCARF).

### ***Audit and Enforcement Unit Data***

The following charts and graphs depict workload data from 2000 through 2007. As noted on the charts, data before 2003 cannot be directly compared with similar data in 2003 and after because of the significant changes in the program effective January 1, 2003.

### ***Overview of Audit Methodology***

#### ***Selection of Audit Subjects***

Audit subjects, including insurers, self-insured employers, and third-party administrators, are selected randomly for routine audits.

The bases for selecting audit subjects for targeted audits are specified in 8 California Code of Regulations (CCR) Section 10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by DWC.
- Failure to meet or exceed FCA Performance Standards.
- High numbers of penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System (WCIS).
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

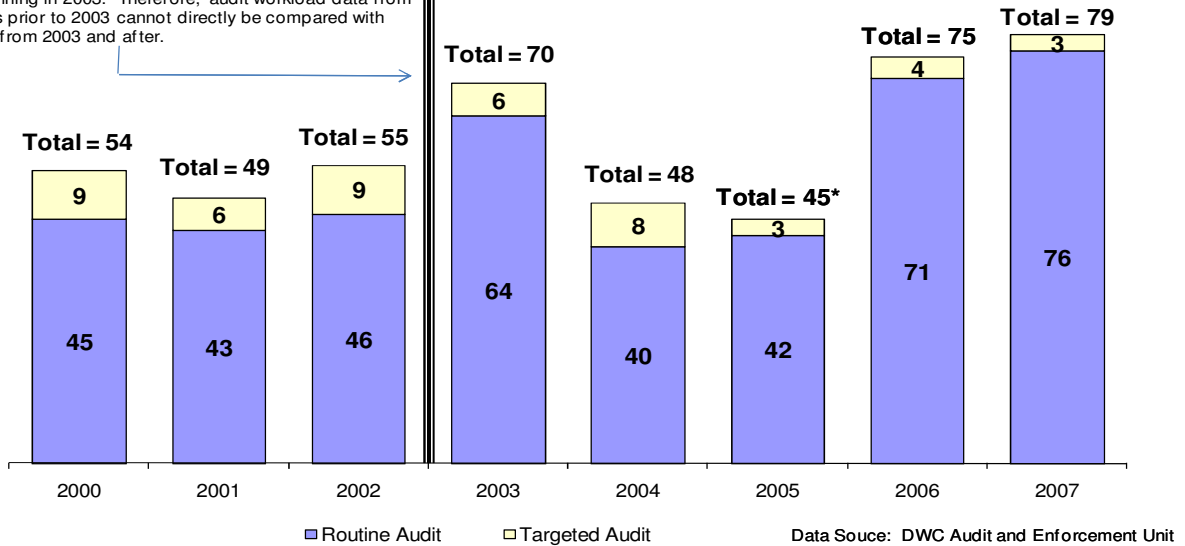
## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Routine and Targeted Audits

The following chart shows the number of routine audits and targeted audits and the total number of audits conducted each year.

#### Routine and Targeted Audits

**Please Note:** Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.



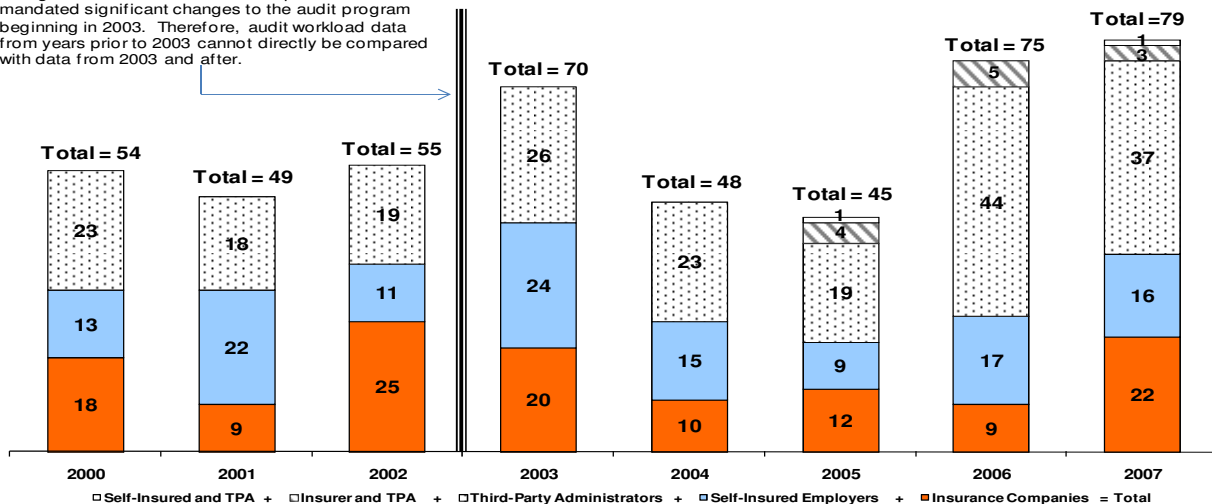
\* Note: An additional target audit was conducted based on a return agreement in a previous stipulation of civil penalty in year 2000.

### Audits by Type of Audit Subject

The following chart depicts the total number of audit subjects each year with a breakdown by whether the subject is an insurer, a self-insured employer, or a third-party administrator.

#### DWC Audits by Type of Audit Subject

**Please Note:** Assembly Bill 749 resulted in major changes to California workers' compensation law and mandated significant changes to the audit program beginning in 2003. Therefore, audit workload data from years prior to 2003 cannot directly be compared with data from 2003 and after.





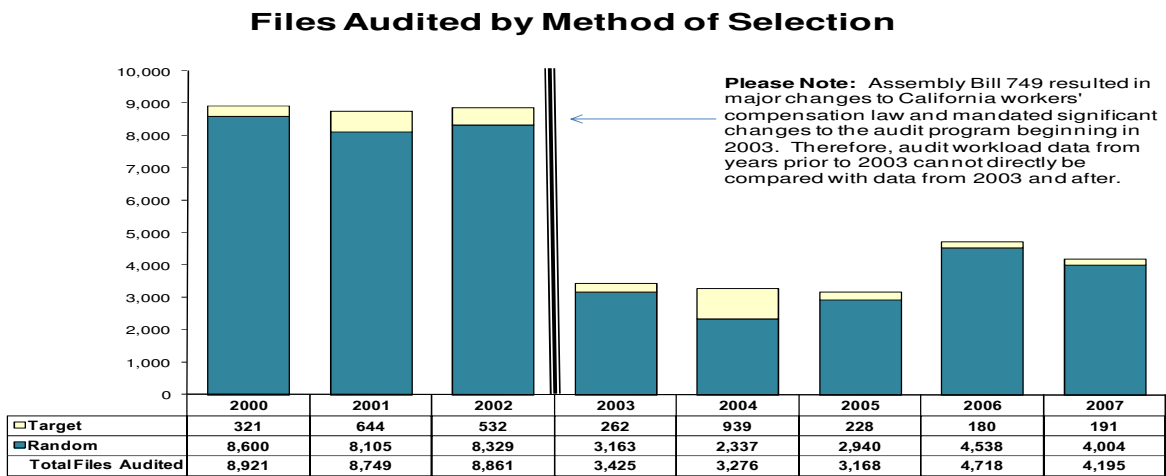
## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Selection of Files to be Audited

The majority of claim files are selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations of the audit subject:

- Targeted files are selected because they have attributes that the audits focus on.
- Additional files include claims chosen based on criteria relevant to a targeted audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total number of claims at the adjusting location and the number of complaints received by DWC related to claims-handling practices. Types of claims include indemnity, medical-only, denied, complaint and additional.

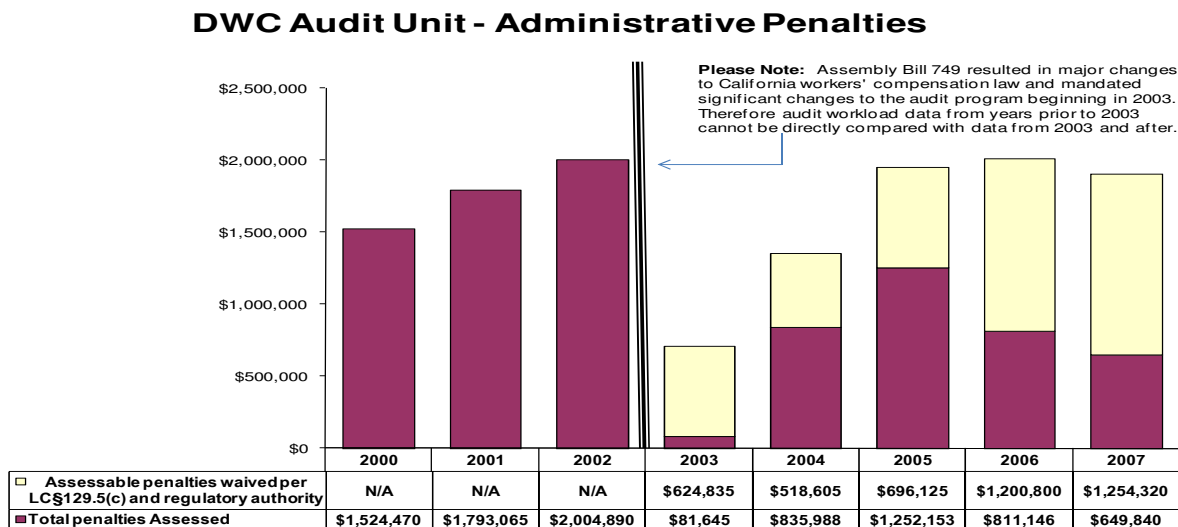
The following chart shows the total number of files audited each year, broken down by the method used to select them.



Data Source: DWC Audit and Enforcement Unit

### Administrative Penalties

As shown in the following chart, the administrative penalties assessed have changed significantly since the reform legislation changes to the Audit and Enforcement Program beginning in 2003.

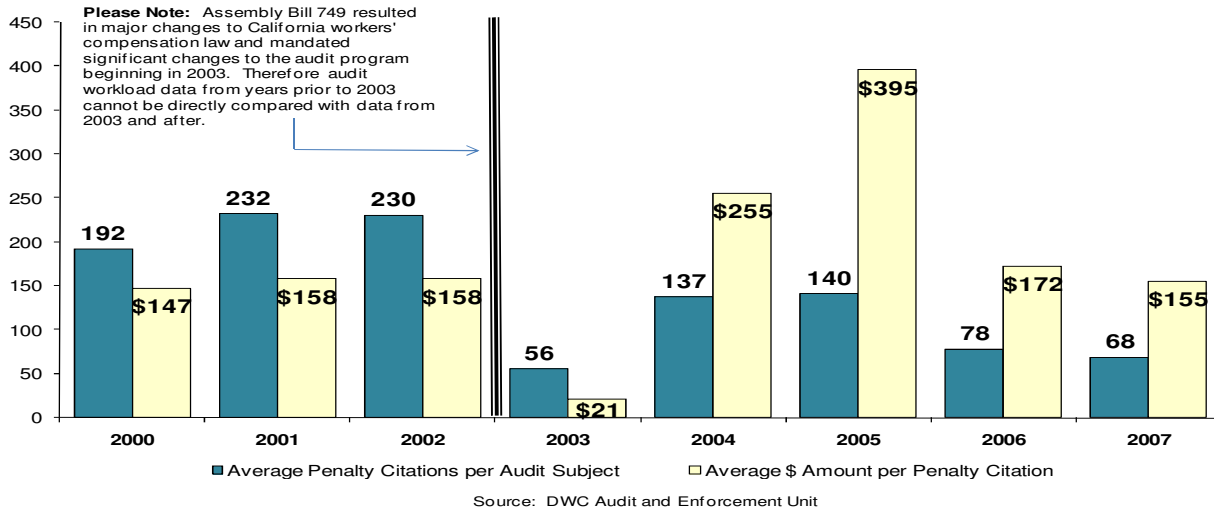


Source: DWC Audit and Enforcement Unit

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

The following chart shows the average number of penalty citations per audit subject each year and the average dollar amount per penalty citation.

**Average Number of Penalty Citations per Audit Subject and Average Amount per Penalty Citation**

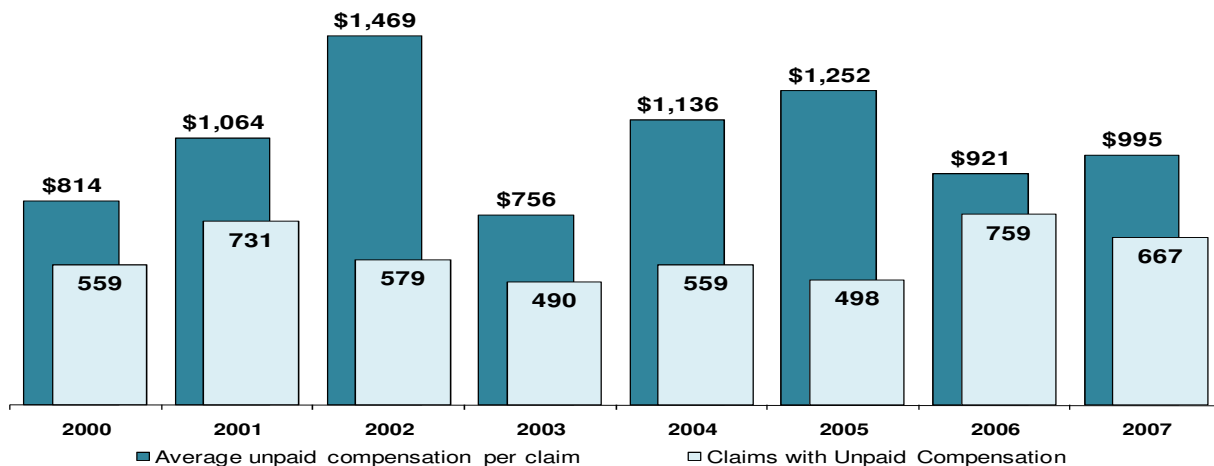


### Unpaid Compensation Due To Claimants

Audits identify claim files in which injured workers were owed unpaid compensation. The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within 7 days of receipt of the audit report. When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to WCARF. In these instances, application by an employee can be made to DWC for payment of monies deposited by administrators into this fund.

The following chart depicts the average number of claims per audit where unpaid compensation was found and the average dollar amount of compensation due per claim.

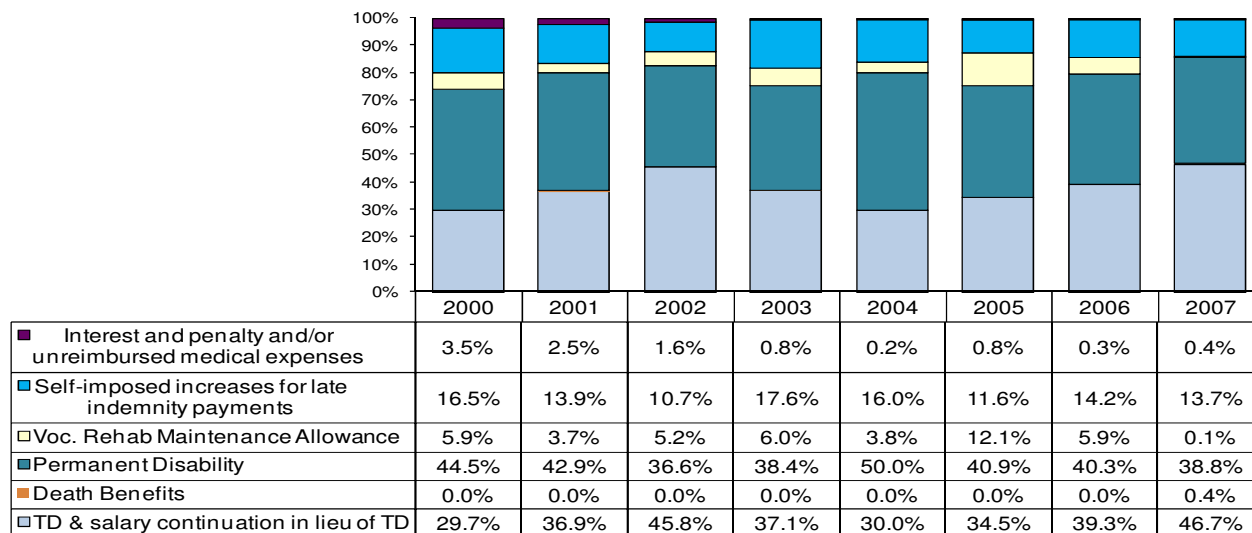
**DWC Audit Unit Findings of Unpaid Compensation  
Number of Claims / Average \$ Unpaid per Claim**



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

This chart shows unpaid compensation each year, broken down by percentage of the specific type of compensation that was unpaid.

### Unpaid Compensation in Audited Files Type by Percentage of Total



Data Source: DWC Audit and Enforcement Unit

For further information...

DWC Annual Audit Reports may be accessed at <http://www.dir.ca.gov/dwc/audit.html>

CHSWC Report on the Division of Workers' Compensation Audit Function (1998) - available at [www.dir.ca.gov/chswc](http://www.dir.ca.gov/chswc)

## DISABILITY EVALUATION UNIT

The DWC Disability Evaluation Unit (DEU) determines permanent disability (PD) ratings by assessing physical and mental impairments in accordance with the Permanent Disability Rating Schedule (PDRS). The ratings are used by workers' compensation judges, injured workers, and insurance claims administrators to determine PD benefits.

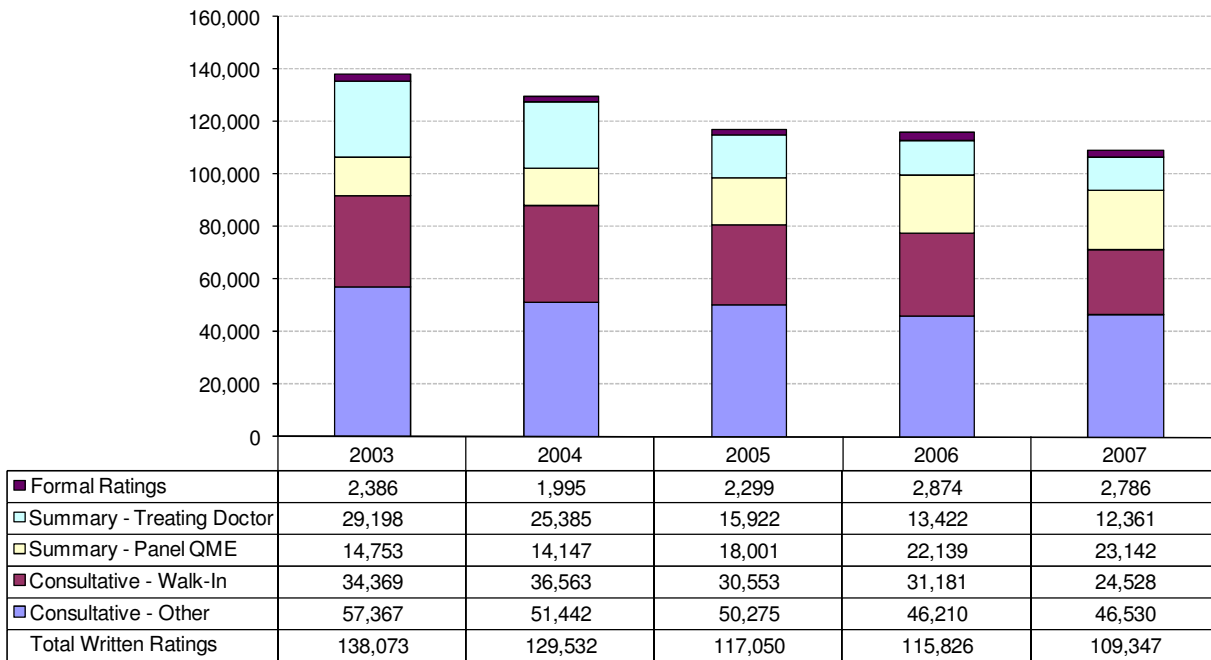
DEU prepares three types of ratings: formal, done at the request of a workers' compensation judge; consultative, done at the request of an attorney or DWC Information and Assistance (I&A) Officer; and summary, done at the request of a claims administrator or injured worker. Summary ratings are done only on non-litigated cases, and formal consultative ratings are done only on litigated cases.

The rating is a percentage that estimates how much a job injury permanently limits the kinds of work the injured employee can do. It is based on the employee's medical condition, date of injury, age when injured, occupation when injured, how much of the disability is caused by the employee's job, and his or her diminished future earning capacity. It determines the number of weeks that the injured employee is entitled to PD benefits.

The following charts depict DEU's workload during 2003 and 2007. The first chart shows the written ratings produced each year by type. The second chart illustrates the total number of written and oral ratings each year.

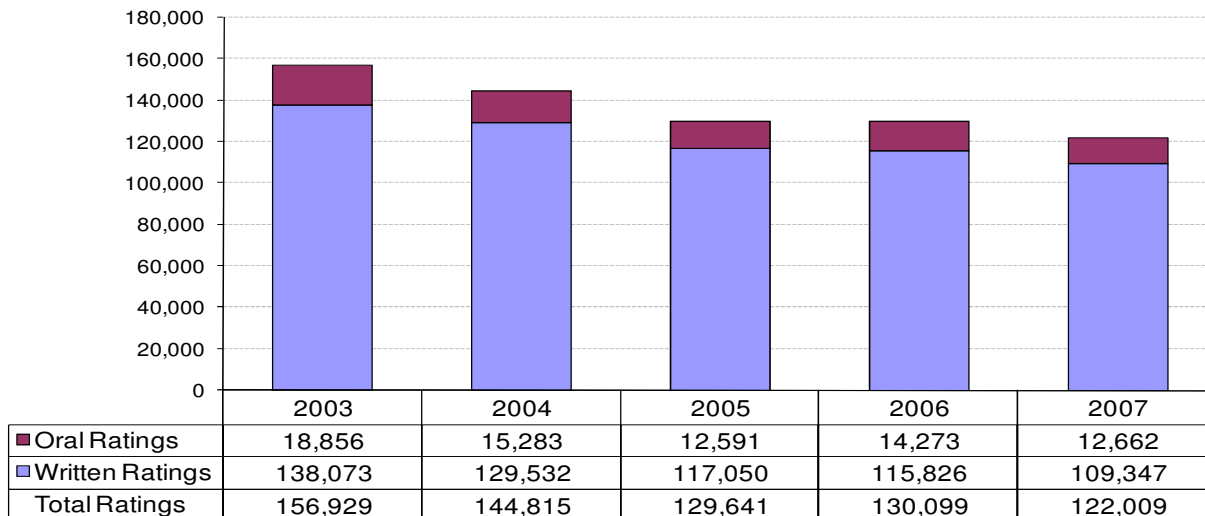
## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### DEU Written Ratings 2003-2007



Data Source: DWC Disability Evaluation Unit

### DEU Oral and Written Ratings by Type 2003 - 2007



Source: DWC Disability Evaluation Unit

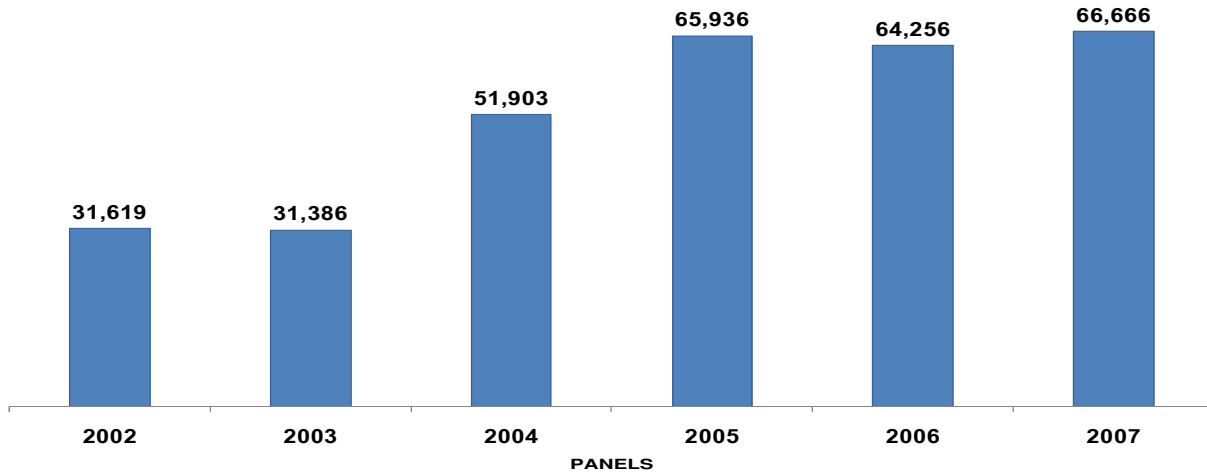
## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### QUALIFIED MEDICAL EVALUATOR PANELS

The chart below indicates the number of QME Panel Lists issued in each year.

DWC assigns panels composed of three QMEs from which an injured worker without an attorney selects the evaluator for a medical dispute. Beginning in 2005, a similar process became effective for cases where the worker has an attorney. This resulted in an increased number of QME panels. The changes contributed to a larger percentage of problems with the panel assignments.

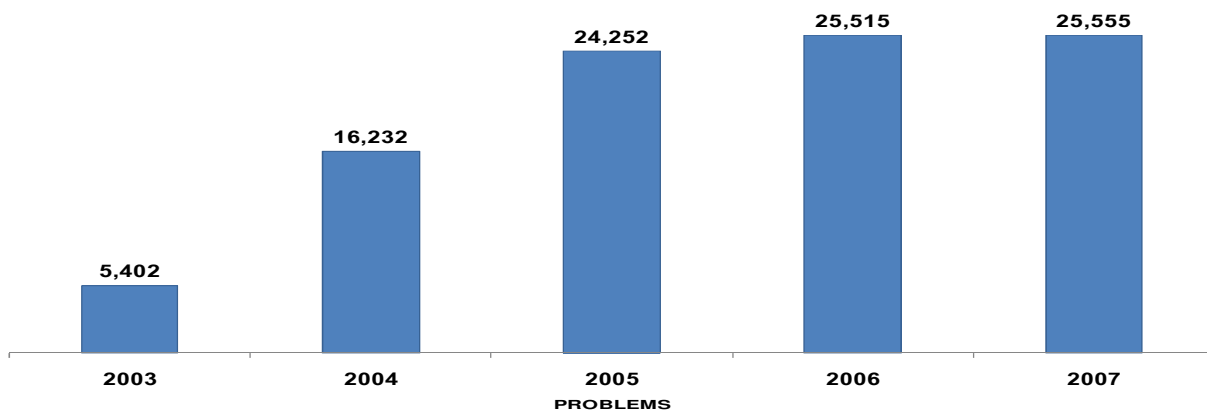
**Number of Qualified Medical Evaluator (QME) Panel Lists**



Data Source: DWC

The following chart indicates the number of problems with the original QME panel issued necessitating a replacement list.

**Number of Qualified Medical Evaluator (QME) Panel Problems**



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### MEDICAL PROVIDER NETWORKS AND HEALTH CARE ORGANIZATIONS<sup>13</sup>

#### *Medical Provider Networks*

##### **Background**

In recent years, the California workers' compensation system has seen significant increases in medical costs. Between 1997 and 2003, workers' compensation medical treatment expenses in California increased by an estimated 138 percent,<sup>14</sup> outpacing the costs for equivalent medical treatment provided in non-industrial settings. To abate this rise in costs, major reforms were made in 2003 and 2004. One such effort was the signing into law of SB 899 in April of 2004. One major component of SB 899 was the option for self-insured employers or insurers to establish a Medical Provider Network (MPN), as promulgated in Labor Code § 4616 et. seq. MPNs were implemented beginning January 1, 2005.

An MPN is a network of providers established by an insurer, self-insured employer, Joint Powers Authority (JPA), the State, group of self-insured employers, self-insurer security fund, or California Insurance Guarantee Association (CIGA) to treat work-related injuries.

The establishment of an MPN gives close to complete medical control to employers. With the exception of employees who have pre-designated a physician, according to California Labor Code Section 4600, employers that have established an MPN control the medical treatment of employees injured at work for the life of the claim as opposed to 30 days of medical control that employers had prior to SB 899. Having an MPN means the employer has more control with regard to who is in the network and who the injured worker sees for care for the life of the claim. The employer gets to choose who the injured worker goes to on the first visit: after the first visit, the injured worker can go to a doctor of his/her choosing in the MPN.

Before the implementation of an MPN, insurers and employers are required to file an MPN application with DWC for review and approval, pursuant to Title 8 CCR § 9767.1 et. seq.

##### *Application Review Process*

California Labor Code Section 4616(b) mandates that DWC review and approve MPN plans submitted by employers or insurers within 60 days of plan submission. If DWC does not act on the plan within 60 days, the plan is deemed approved by default.

Upon receipt of an MPN application, DWC does an initial cursory review of all applications received. The result of the review is communicated to each applicant in a "complete" or "incomplete" letter, as applicable. Applicants with sections missing in their application will be informed to complete the missing part(s). Applicants with a complete application will receive a "complete" letter indicating the target date of when the full review of their application will be completed. The clock for the 60-day time frame within which DWC should act starts from the day a complete application is received at DWC.

The full review of an application involves a thorough scrutiny, using a standard checklist, to see if the application followed the statutory and regulatory requirements set forth in California Labor Code Section 4616 et. seq. and the California Code of Regulations sections 9767.1 et. seq. The full review culminates with an approval letter if no deficiency is discovered in the submitted application. Applicants with deficient applications are sent a disapproval letter listing deficiencies that need to be corrected.

Material modification filings go through a similar review process as an initial application. Except in cases where an applicant was approved under the emergency regulations and is now updating the application

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<sup>13</sup> The information in this section was provided by the DWC Medical Unit, with minor edits by CHSWC staff.

<sup>14</sup> Based on WCIRB annual report *California Workers' Compensation Losses and Expenses* prepared pursuant to § 11759.1 of the California Insurance Code.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

to the permanent regulations, reviews of material modifications are done only for those sections of the applications affected by the material change.

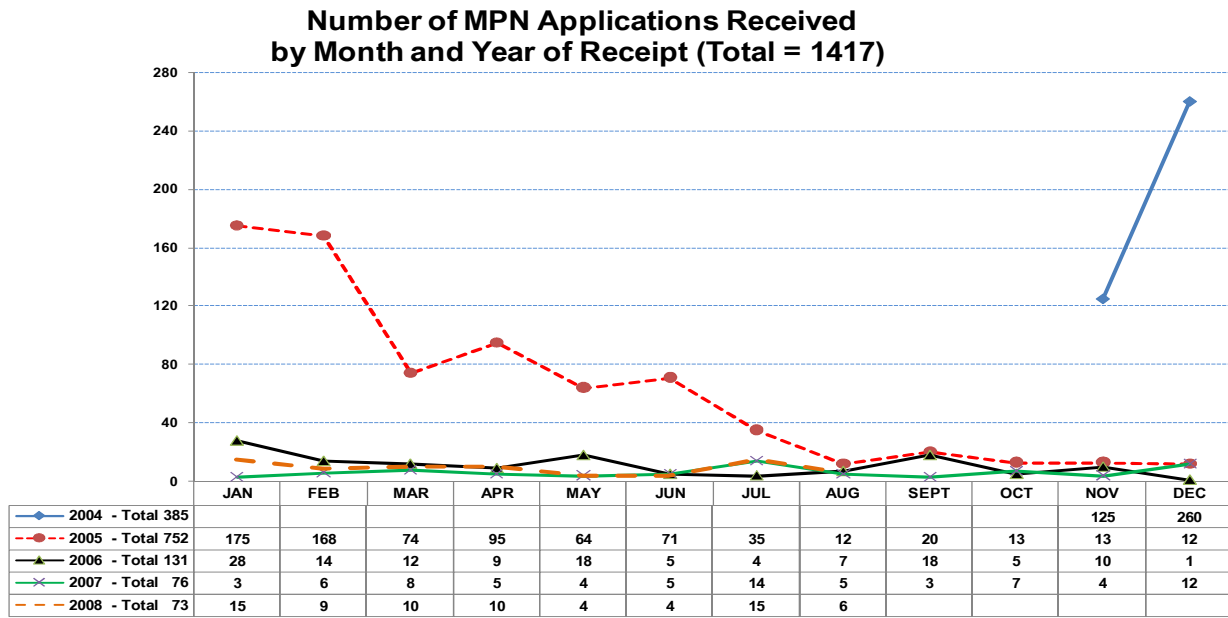
### *Applications Received and Approved*

The Table below provides a summary of MPN program activities since the inception of the MPN program in November 1, 2004, to August 20, 2008. During this time frame, the MPN program has received 1,417 MPN applications. Of these, 17 were ineligible as they were erroneously submitted by insured employers who under the MPN regulations are not eligible to set up an MPN. As of August 20, 2008, 1,280 applications were approved. Of these, 987 were approved under the emergency regulations and the remaining 251 under the permanent regulations. Seventeen (17) approved applications were revoked by DWC. The reason for revocation was the applicants' erroneous reporting of their status as self-insured when in fact they were insured entities. One hundred and two (102) were withdrawn after approval and thirty-nine (39) were withdrawn before approval. The reasons for the withdrawals were either that the applicant decided not to pursue their MPN or there was a duplicate submission of the same application.

**Table: MPN Program Activities from November 1, 2004, to August 20, 2008**

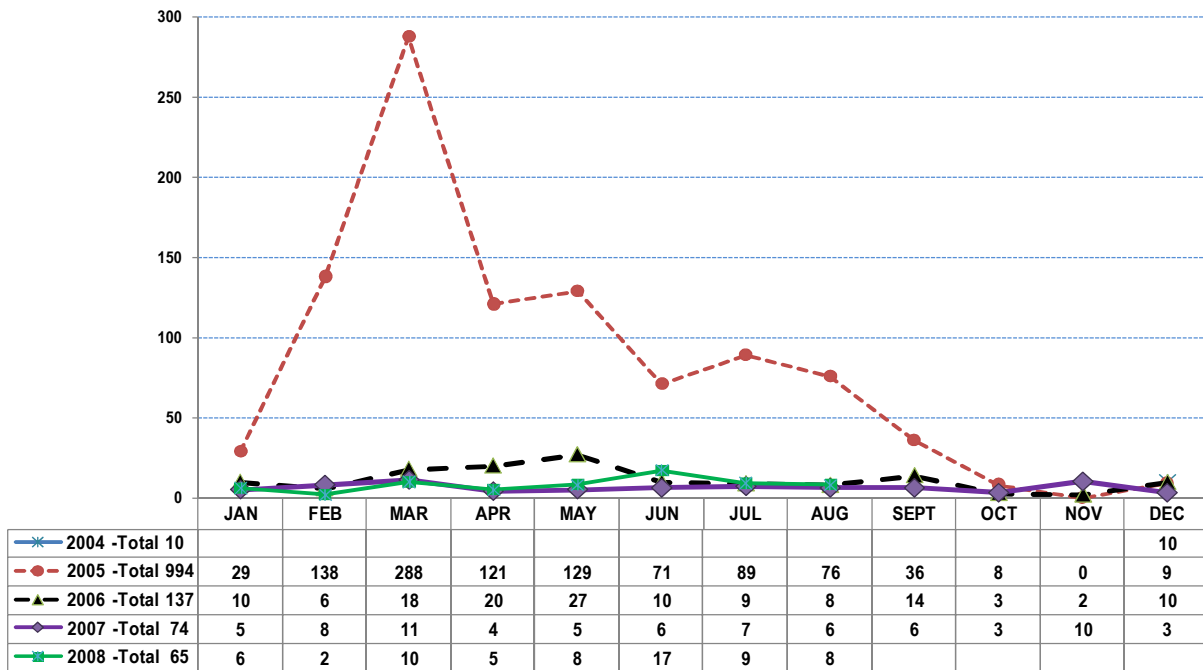
MPN Applications	Numbers
Received	1,417
Approved	1,280
Material Modifications	1,001
Withdrawn	141
Revoked	17
Ineligible	17

The figures and tables below show the time of receipt of MPN applications by month and year. The bulk of applications, 53.1 percent (752), were received in 2005. About 9 percent (131) were received in 2006, and 5.4 percent (76) were received in 2007. Similarly, 77.7 percent (994) were approved in 2005; while only 10.7 percent (137) were approved in 2006, and 5.8 percent (74) were approved in 2007.



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

**Number of MPN Applications Approved  
by Month and Year (Total=1280)**



Data Source: DWC

### Material Modifications

MPN applicants are required by Title 8 CCR § 9767.8 to provide notice to DWC for any material change to their approved MPN application. In addition, MPN applicants approved under the emergency regulations must update their application to conform with the permanent MPN regulations when providing notice of material change to their approved application.

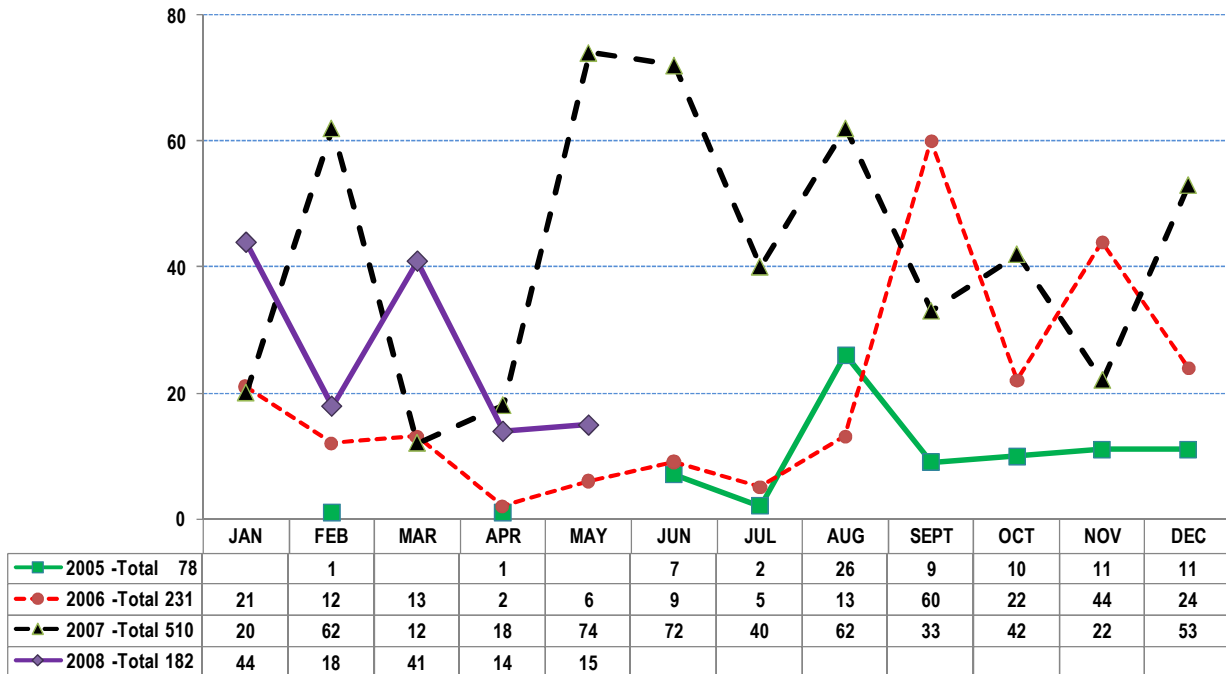
As of August 20, 2008, 1,001 applicants had filed a material modification with DWC. Of these, 850 were approved under the emergency regulations and as such had to update their application to conform to the permanent MPN regulations. One hundred fifty-one (151) were approved under the permanent regulations. Some applicants have more than one material modification. One hundred and thirty-one (131) applicants had two material modification filings, 15 had three filings, while 1 had 23 filings.

The following chart shows how many material modification filings were received at DWC; 78 material modifications were filed in 2005, 231 in 2006, 510 in 2007, and 182 in 2008.



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Number of MPN Material Modifications Received by Month and Year (Total = 1,001)



Data Source: DWC

### MPN Applicants

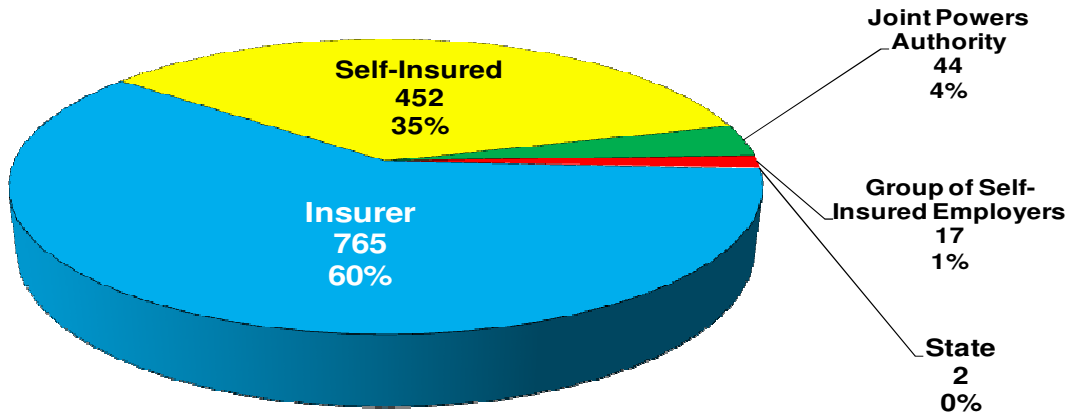
The table below shows the distribution of MPN applicants by type of applicant. The majority, 59.8 percent, of MPN applications were filed by insurers, followed by self-insured employers (35.3 percent).

**Table: Distribution of Approved MPN Applications by Type of Applicant**  
(Total for all years = 1280)

Type of Applicant	2004	2005	2006	2007	2008
Insurer	7	611	68	31	48
Self-Insured	3	346	55	36	12
Joint Powers Authority		33	4	4	3
Group of Self-Insured Employers		2	10	3	2
State		2			
<b>Total</b>	10	994	137	74	65

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

**Distribution of All Approved MPN Applications by Type of Applicant from 2004 to 2008 (Total = 1280)**



Data Source: DWC

### HCO Networks

HCO networks are used by 704 (55 percent) of the approved MPNs. The distribution of MPNs by HCO is shown in the Table below. First Health HCO has 32.7 percent of the MPN market share followed by Prudent Buyer HCO, which has 10.4 percent, and Corvel HCO, which has 8.7 percent. There seems to be a slow decrease in the use of HCO networks for MPNs.

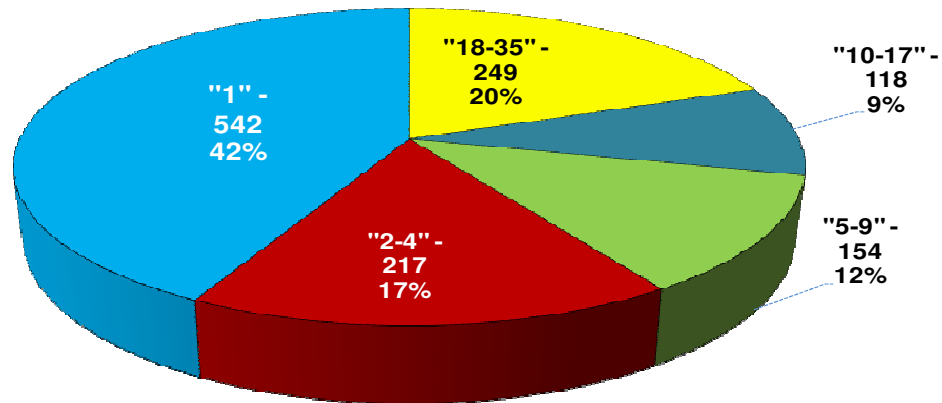
MPN applicants are allowed to have more than one MPN. As a result, 54.3 percent of applicants have more than one MPN, including 19.3 percent with 19 to 35 MPNs. (See Table Distribution of Approved Applicants by Number of MPNs per Applicant above). The names of MPN applicants with 10 or more approved MPNs are shown in the Table on the following page (Names of MPN Applicants with 10 or More Approved MPNs). ACE American Insurance Company leads with 35 MPNs followed by Zurich American Insurance Company with 31 MPNs, and American Home Assurance Company with 29 MPNs.

**Table: Number of MPN Applicants Using HCO Networks.**

Name of HCO	Number	% Application Received	% Application Approved
CompAmerica (First Health)	419	59.5%	32.7%
Prudent Buyer (Blue Cross)	133	18.9%	10.4%
Corvel	111	15.8%	8.7%
Medex	31	4.4%	2.4%
CompPartners	6	0.9%	0.5%
Net-Work	3	0.4%	0.2%
Intracorp	1	0.1%	0.1%
<b>Total Using HCO</b>	<b>704</b>	<b>100.0%</b>	<b>55.0%</b>

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Distribution of Approved MPNs by "Number of MPNs per Applicant", 2007



Data Source: DWC

**Table: Names of MPN Applicants with 10 or More Approved MPNs**

Name of Applicant	Number of MPNs
ACE American Insurance Company	35
Zurich American Insurance Company	31
American Home Assurance Company	29
Fidelity & Guaranty Insurance Company	25
United States Fidelity and Guaranty Company	21
Discover Property & Casualty Insurance Company	21
Fidelity & Guaranty Insurance Underwriters, Inc	20
Old Republic Insurance Company	16
The Insurance Company of the State of Pennsylvania	16
American Zurich Insurance Company	14
New Hampshire Insurance Company, Ltd.	14
National Union Fire Insurance Company of Pittsburgh, PA	13
Commerce and Industry Insurance Company	12
Granite State Insurance Company	12
Landmark Insurance Company	10
ARCH Insurance Company	10

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### **Covered employees**

The number of MPN applicants reporting employees under their MPN has increased since the last report, as more and more MPN applicants are reporting the number of employees covered under the MPN, at the time of filing their material modification to update their MPN application to conform to the MPN permanent regulations. Currently, we have information on 65.6 percent (840) of approved MPN applicants. The total estimated number of covered employees, as reported by these MPN applicants, is 19,555,589. DWC recommends that this number be used with caution, as it believes this number to possibly be inflated due to insurers' multiple counting of covered employees in their multiple MPN applications.

### **Employers/Insurers with MPN**

Neither the number nor the name of insured employers using MPNs can be obtained from MPN applications. Insurers are not required to report who among their insured employers are using their MPN. The list of self-insured employers with a self-reported number of covered employees greater than five thousand is shown below. This list includes some large self-insured companies such as Albertsons, AT&T, FedEx, Safeway, Home Depot, Target Corporation, Rite Aid, Raley's, and Federated Department Store.

### **MPN Complaints**

The MPN program has set up a complaint logging and resolution system. Complaints are received by phone, fax, email and mail. Since January 2006, DWC has received 172 complaints. DWC has contacted the liaison of the MPNs and resolved and closed 170 of the complaints.

### **Status of the MPN Program**

The MPN program is a new program that is growing and as such, the intake, application tracking and review process are works in progress. The program has improved over time but there is still room for improvement. Professional as well as clerical staff could benefit from more training on programs such as Excel and Access which could facilitate the intake logging process. In addition, scanning of copies of application documents could reduce the space that is currently being used by MPN applications. Currently, two hard copies of each application are kept by DWC.

The program has two clerical staff (half-time) and three professional staff (not including two medical doctors and one legal counsel who are readily available for consulting).

During the past year, the main focus of the program has been to review and approve MPN material modifications and to process the change of MPN notice. However, more research on the MPN provider networks and the functioning of MPNs needs to be undertaken on the following: what percentage of the different networks overlap, i.e., which networks have the same doctors? what are the economic profiling policies of the different networks? which areas of the State are covered by MPNs and which areas lack providers? And which provider specialties are lacking?

DWC does not have any mechanism to monitor if approved MPNs are indeed functioning according to their approved application. However, a complaint-tracking system has been put in place, and so far, DWC has received 172 complaints. Most of the complaints were regarding insufficient provider listings given to the injured worker.

# WORKERS' COMPENSATION SYSTEM PERFORMANCE

## List of Self-Insured MPN Applicants with Covered Employees of 5,000 or more, August 2008

Name of Applicant	Name of MPN	Number of Covered employees
Regents of The University of California	Regents of The University of California MPN	189925
Los Angeles Unified School District	Sedgwick CMS Extended Medical Provider Network	122647
County of Los Angeles	CorVel HCO	87000
County of Los Angeles	First health CompAmerica Select HCO	87000
County of Los Angeles	Interplan Health Group	87000
Target Corporation	Target Medical Provider Network	75300
New Albertsons, Inc.(A SuperValu Company)	New Albertson's Inc. CA MPN	65352
Federated Dept. Stores, Inc.	CorVel MPN/Federated Department Stores	62541
Safeway, Inc.	Safeway Select MPN	60000
Kelly Services, Inc	Kelly Services Medical Provider Network	58500
The Home Depot	The Home Depot Medical Provider Network	58048
Pacific Bell Telephone Company	Sedgwick CMS Extended Medical Provider Network	34131
Pacific Bell Telephone Co.	Liberty Mutual Group MPN	34131
Costco Wholesale	Costco MPN	31000
Kaiser Foundation Hospitals, a California Corporation	Kaiser Permanente MPN	29880
Southern California Permanente Medical Group	Kaiser Permanente MPN	26353
Mainstay Business Solutions	WellComp Medical Provider Network	22500
San Diego Unified School District	State Fund Medical Provider Network	22000
County of Orange	WellComp Medical Provider Network	22000
County of Orange	Cambridge Orange County MPN	21500
County of Orange	Intracorp	21400
Pacific Gas and Electric Company	PG&E /Blue Cross Medical Provider Network	21000
Marriott International, Inc.	Marriott's Medical Provider Network	20511

# WORKERS' COMPENSATION SYSTEM PERFORMANCE

<b>Name of Applicant</b>	<b>Name of MPN</b>	<b>Number of Covered employees</b>
Tenet Healthcare Corporation	First Health CompAmerica Primary HCO Network (or "First Health Primary")	20439
Manpower Inc.	Concentra MPN	20320
Sun Microsystems, Inc. (Sun)	First Health Network	20000
San Diego Unified School District	TRISTAR - CompAmerica Primary HCO	20000
City and County of San Francisco	City and County of San Francisco Medical Provider Network	20000
Walt Disney World Co (The Disneyland Resort Division)	Disneyland Resort Medical Provider Network	20000
Ventura County Schools Self-Funding Authority	WellComp Medical Provider Network	19566
County of Riverside	CorVel MPN/County of Riverside	19000
Countrywide Financial Corporation	Countrywide Network	18000
Manpower, Inc.	Sedgwick CMS MPN	17500
Nordstrom Inc.	Nordstrom Medical Provider Network	17000
The County of Riverside	First Health Comp America Select	16600
American Building Maintenance (ABM)	ABM Network	15712
Hewlett Packard Company	Sedgwick CMS Extended Medical Provider Network	15388
Southern California Edison	SCE Select	15077
County of San Bernardino	CorVel MPN	14000
The Walt Disney Company	The Liberty Mutual Group MPN	13924
Alliance of Schools for Cooperative Insurance Programs	WellComp Medical Provider Network	13764
Securitas Security Services USA, Inc.	Broadspire-Concentra Standard MPN	13500
Raley's	Raley's Quality Medical Provider Network	13500
Lockheed Martin Corporation	INTRACORP/Lockheed Martin MPN	13400
Intel Corporation	Broadspire MPN	13223
COP/CPB of the Church of Jesus Christ of the Latter-day Saints	Deseret MPN	12143

# WORKERS' COMPENSATION SYSTEM PERFORMANCE

<b>Name of Applicant</b>	<b>Name of MPN</b>	<b>Number of Covered employees</b>
Barrett Business Services, Inc.	BBSI/CorVel MPN	12000
Lowe's HIW, Inc.	Lowe's CA MPN	11500
AT&T	Sedgwick CMS Extended Medical Provider Network	11500
Santa Barbara County Schools - SIPE	PacMed, Inc. HCO	11000
County of Kern	County of Kern Medical Provider Network	10800
Foster Farms	CorVel MPN	10000
LFP, Inc. and Affiliates	CorVel MPN	10000
99¢ Only Stores	WellComp Medical Provider Network	9976
United Airlines	CorVel/UAL/Kaiser MPN	9500
San Francisco Unified School District	First Health CompAmerica Primary HCO	9500
Memorial Health Services	TRISTAR CompAmerica Primary HCO	8947
Alameda County	First Health CompAmerica Primary Network	8494
Kaiser Foundation Health Plan, Inc. A California Corporation	Kaiser Permanente MPN	8448
Los Angeles Dept. of Water & Power	CorVel HCO / CorVel HCO Select	8400
Save Mart Supermarkets, Inc.	The Status MPN-Save Mart	8000
The County of Fresno	The County of Fresno MPN	7500
BLP Schools' Self-Insurance Authority	WellComp Medical Provider Network	7132
Whittier Area Schools Insurance Authority	WellComp Medical Provider Network	6850
BCI Coca-Cola Bottling Company of Los Angeles (Coca-Cola Enterprises, Inc.)	Sedgwick CMS Medical Provider Network	6800
MERGE Risk Management JPA	WellComp Medical Provider Network	6778
Santa Ana Unified School District	WellComp Medical Provider Network	6677
City of Long Beach	TRISTAR CompAmerica Primary HCO	6674
Providence Health System	Intracorp/Providence Medical Provider Network	6500

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

<b>Name of Applicant</b>	<b>Name of MPN</b>	<b>Number of Covered employees</b>
The Salvation Army	Red Shield	6000
Raley's	CorVel HCO/CorVel HCO Select	6000
Los Angeles County Office of Education	Los Angeles County Office of Education - Comp Care MPN	5857
New United Motor Manufacturers, Inc.	NUMMI MPN	5536
Dole Food Company, Inc.	First Health CompAmerica Select HCO Network (or "First Health Select")	5477
Orange Unified School District	WellComp Medical Provider Network	5449
Circuit City Stores, Inc.	SRS First Health CompAmerica Primary	5336
Oakland Unified School District	Oakland Unified School District MPN	5217
San Mateo County	San Mateo County MPN	5200
San Jose Unified School District	First Health CompAmerica Primary HCO	5141
County of Monterey	Liberty Mutual Group MPN	5046

### ***Health Care Organization Program***

Health Care Organizations (HCOs) were created by the 1993 workers' compensation reforms. The statutes for HCOs are given in California Labor Code Sections 4600.3 through 4600.7 and Title 8 California Code of Regulations (CCR) sections 9770 through 9779.3.

HCOs are managed care organizations established to provide health care to employees injured at work. A health care service plan (HMO), disability insurer, workers' compensation insurer, or a workers' compensation third-party administrator can be certified as an HCO.

Employers who contract with an HCO can direct treatment of injured workers from 90 to 180 days depending on the contribution of the employer to the employees' non-occupational health care coverage.

An HCO must file an application and be certified according to Labor Code Section 4600.3 et seq. and Title 8 CCR sections 9770 et. seq. HCOs pay a fee of \$20,000 at the time of initial certification and a fee of \$10,000 at the time of each three-year certification. In addition, annually, HCOs are required to pay \$1.00 per enrollee based on their enrollment figure as of December 31 of each year. The HCO loan from the General Fund has been paid off in full. Therefore, the \$0.50 per enrollee surcharge has been eliminated as of July 2007.



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

Currently, the HCO program has 12 certified HCOs. The list of certified HCOs and their most recent date of certification/recertification are given in the table below. Even though there are 12 certified HCOs, only 7 have enrollees. The rest are keeping their certification and use their provider network as a deemed entity for MPNs.

**Table: List of Currently Certified HCOs by Date of Certification/Recertification**

<b>Name of HCO</b>	<b>Date of Certification/Recertification</b>
CompPartners	07/24/2007
Corvel	12/30/2005
Corvel Select	12/30/2005
First Health/ CompAmerica Primary	09/05/2007
First Health/ CompAmerica Select	09/05/2007
Intracorp HCO Plan B	12/30/2005
Kaiser Foundation Health Plan	12/03/2006
MedeEx Health Care	03/16/2007
MedEx 2 Health Care	10/10/2006
Network HCO	04/16/2007
Promesa (formerly Applied Occupation)	04/12/2007
Prudent Buyer HCO (Blue Cross)	11/13/2005

Note: This table does not include Sierra HCO shown in the table below, which decided not to keep its HCO certification.

### HCO Enrollment

At its maximum, mid-2004, the HCO enrollment had reached about half a million enrollees. However, with the enactment of the MPN laws, the enrollment for the large HCOs such as First Health and Corvel declined considerably. Compared to the 2004 enrollment, First Health lost 100 percent of its enrollees while CorVel's declined by 97.2 percent to 2,779. Astrasano, Genex, and PacMed HCOs, not shown in the table below, were certified in 2004. However, these three HCOs never had HCO enrollees but used their HCO network for MPNs. Currently, they have terminated their HCOs. Promesa (formerly known as Applied Occupation) was certified in April 2007. As of June 2008, the total enrollment figure had fallen by 68 percent from the 2004 number of 481,337 to 155,919. Table 2 shows the number of enrollees as of December 31 of each year 2004 through 2007 and as of June 30, 2008.

**Table: List of HCOs by Number of Enrollees for 2004 through June 2008**

<b>Name of HCO</b>	<b>Year</b>				
	<b>Dec-04</b>	<b>Dec-05</b>	<b>Dec-06</b>	<b>Dec-07</b>	<b>June-08</b>
CompPartner	60,935	61,403	53,279	13,210	1,811
CorVel/ Corvel Select	100,080	20,403	3,719	3,050	2,779
CompAmerica Primary/ Select ( First Health)	218,919	2,403	0	0	0
Intracorp	6,329	3,186	2,976	2,870	0
Kaiser	30,086	67,147	66,138	69,602	71,428
Medex/ Medex 2	62,154	66,304	46,085	69,410	73,528
Net Work HCO	1,204	0	0	0	0
Promesa	na	na	na	na	10,101
Prudent Buyer (Blue Cross)	1,390	0	0	0	0
Sierra	240	0	0	0	0
<b>TOTAL</b>	<b>481,337</b>	<b>220,846</b>	<b>172,197</b>	<b>158,142</b>	<b>155,919</b>

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Health Care Organizations (HCO) Program Status

Even though HCO enrollment has decreased significantly, because HCOs use their network as deemed entities for MPNs, DWC still has the mandate to ensure that all HCO documentation is up to date and all fees are collected. In 2007, the HCO staff work load included a review of six recertification filings, CompPartners, First Health Primary, First Health Select, Medex, Medex 2 and Net-Work HCO.

### Proposed Regulatory Changes

HCOs are required to file a data report annually according to Labor Code Section 4600.5(d)(3) and Title 8 CCR section 9778. However, since WCIS now requires reporting of medical services provided on or after 9/22/2006, as mandated by Title 8 CCR section 9700 et seq., the HCO data collection on the same subject is redundant. Thus, DWC thus can propose to repeal the sections of the law mentioned above.

Pre-designation laws for HCOs in Labor Code Section 4600.3 should be in accord with the pre-designation for MPNs as stated in Labor Code Section 4600.

### Pre-Designation Under Health Care Organization versus Medical Provider Networks

An employee's right of pre-designation under an HCO has become different from the right under an MPN. The general right of pre-designation under Labor Code Section 4600 as it existed in 1993 was mirrored in Section 4600.3 for HCOs. Eligibility to pre-designate was subsequently restricted by the 2004 amendments of Section 4600. The provisions of the HCO statutes were not amended to conform, so employees who would not otherwise be eligible to pre-designate a personal physician may become eligible if their employers adopt an HCO. An HCO may lose medical control more frequently than an MPN due to this lack of conformity in the statute. Unless there is a change in the legislation, Labor Code Section 4600(d), the right to pre-designate, will sunset on December 31, 2009.

*For further information...*



The latest information on MPNs may be obtained at [www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc) and [http://www.dir.ca.gov/dwc/MPN/DWC\\_MPN\\_Main.html](http://www.dir.ca.gov/dwc/MPN/DWC_MPN_Main.html)

### DIVISION OF WORKERS' COMPENSATION MEDICAL ACCESS STUDY<sup>15</sup>

*Medical Access Study* – Released February 2007

Labor Code Section 5307.2 of SB 228 mandates that the AD of the DWC contract with an independent research firm to perform an annual study of access to medical treatment for injured workers. There are two major goals to the study: the first is to analyze whether there is adequate access to quality health care and health care products for injured workers; and the second is to make recommendations to ensure continued access. The Labor Code has one mechanism for the AD to respond to a finding of insufficient access, should one exist, by making appropriate adjustments to the Fee Schedules; in addition, if substantial access problems exist, the AD may adopt fees in excess of 120 percent of Medicare fees.

Data for two of the surveys, the *Injured Worker Survey* and the *Provider Survey*, were collected by the San Francisco State University (SFSU) Public Research Institute. A third survey was administered to claims administrators, including insurers, third-party administrators, self-insured and self-administered employers.

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<sup>15</sup> Update to the DWC Medical Access Study was not available.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

Results of the injured worker study included that:

- 83 percent of those surveyed felt they were able to get access to quality medical care for their injury.
- 78 percent of those surveyed were satisfied with the overall care they received for their injury. This figure compares with 77 percent who were satisfied with their overall care in a 1998 DWC Study and with 83 percent in a 2004 Pennsylvania study.
- Comparing responses in both the injured worker survey and the provider survey to questions about occupational medicine behaviors indicated that:
  - 83 percent of injured workers and 84 percent of providers responded that they felt that the physician understood the worker's job demands.
- 87 percent of workers and 92 percent of providers responded that the physician discussed work restrictions.
  - 81 percent of injured workers responded that their physician discussed ways to avoid re-injury.

The survey looked at return to work (RTW). Findings included that:

- 2.4 percent of injured workers reported that they did not get specialty care.
- 5.5 percent reported that they got specialty care but had difficulties obtaining it.
- 2.3 percent reported that they did not get any of the recommended occupational therapy or physical therapy treatment.
- 6.3 percent reported that they got specialty care but had difficulties obtaining it.

Findings of the survey about RTW included that:

- 78 percent were currently working at the time of the interview.
- 11 percent were not working for reasons unrelated to their injury.
- 10 percent reported that they were not working as a result of their injury.
- 55 percent reported that they had not fully recovered more than one year after injury, although these workers may be back at work even though they are not fully recovered.
- 45 percent reported that they were fully recovered, and 10 percent reported that there was no improvement. These figures for RTW are somewhat comparable to previous studies: 70 percent of workers had not fully recovered in the 1998 DWC study, and 72 percent in the 2000 Washington State study had not fully recovered; however, these studies had shorter time frames.

Results of the provider survey, which assesses the physicians' perception of access to care and therefore is not a qualitative measure, included that:

- 65 percent of physicians felt that access to care has declined since 2004.
- 27 percent reported that access to care stayed the same.
- 7 percent reported that access to care improved.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### *Conclusion*

Main findings of the study included that:

- Most injured workers have access to quality care.
- Most injured workers are satisfied with their care, and levels of satisfaction appear unchanged since 1998.
- The percentage of injured workers experiencing problems accessing care is low; however, the number of individuals potentially affected is large, given the large number of workplace illnesses and injuries reported each year in California.
- Providers' perceptions of access and quality differ substantially from injured workers' perception.
- Providers' negative ratings of access and quality are concentrated among certain provider types and specialties.

### **INFORMATION AND ASSISTANCE UNIT**

The DWC I&A Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws. DEU, often the first DWC contact for injured workers, plays a major role in reducing litigation before WCAB.

In calendar year 2004, the DWC I&A Unit:

- Handled 400,929 calls from the public.
- Reviewed 12,250 settlements.
- Conducted 24,283 face-to-face informal meetings with members of the public seeking advice on workers' compensation matters.
- Made 22 public presentations, in addition to regular monthly workshops for injured workers at eight district offices.

In calendar year 2006, the DWC I&A Unit:

- Handled 408,529 calls from the public.
- Reviewed 15,883 settlements.
- Conducted 23,377 face-to-face meetings with injured workers at the counter.
- Made 163 public presentations.

In calendar year 2007, the DWC I&A Unit:

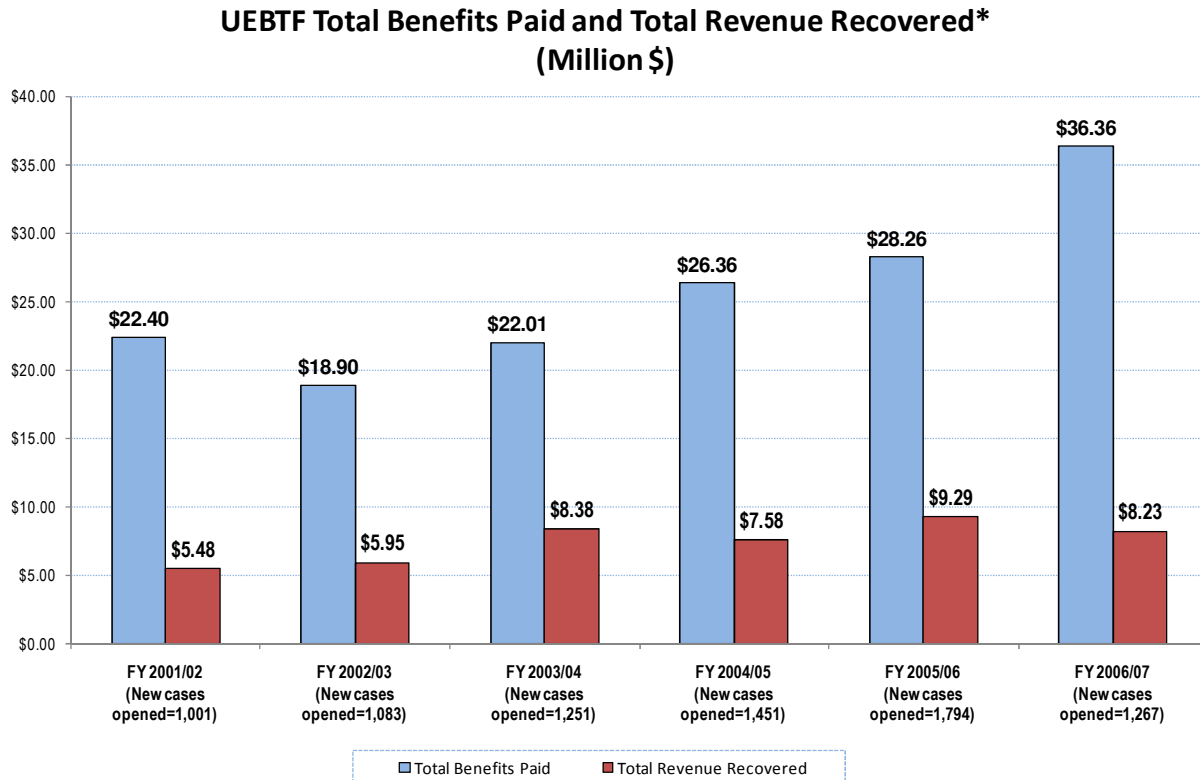
- Handled 404,501 incoming calls.
- Reviewed 16,853 settlements.
- Had 22,858 face-to-face meetings with injured workers at the counter.
- Held 183 workshops for injured workers and 6 workshops for employers.

After the enactment of SB 899 in April 2004, DWC held a special three-day statewide training seminar for all I&A officers, as well as other DWC staff, to provide early guidance on implementing the new reform law. Later in the year, efforts commenced to revitalize the monthly workshops in all 24 district offices and to update all I&A guides and fact sheets.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### UNINSURED EMPLOYERS BENEFITS TRUST FUND

Claims are paid from the Uninsured Employers Benefit Trust Fund (UEBTF) when illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by WCAB. The number of new UEBTF cases and dollar amounts associated with new opened claims for the past five fiscal years are shown below.



\* Includes collections, DLSE penalties, and inmates without dependents

Data Source: DWC

### ADJUDICATION SIMPLIFICATION EFFORTS

#### *Division of Workers' Compensation Information System*

The Workers' Compensation Information System (WCIS) is intended to be an information source to help the AD of the DWC and other State policymakers carry out their decision-making responsibilities and to provide accurate and reliable statistical data and analyses to other stakeholders in the industry. The specific legislative mandate for WCIS states that it should provide information in a cost-effective manner for:

- Managing the workers' compensation system.
- Evaluating the benefit-delivery system.
- Assessing the adequacy of indemnity payments.
- Providing data for research.

WCIS has been collecting information about workers' compensation injuries via electronic (computer-to-computer) data interchange since March 2000. As of the end of April 2008, the system had collected more than 6.5 million employers' first report of injury (FROI), subsequent reports of injury (SROI) pertaining to over 1.3 million unique indemnity claims, and over 500,000 medical claims providing

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

detailed medical billing data. Hundreds of claims administrators provide data to WCIS, representing all segments of industry in California.

The most important current use of the WCIS database is for estimating the impact of the 2005 PDRS. Data from WCIS are being used in conjunction with data from DWC's DEU and from the Employment Development Department (EDD) to assess the existence and magnitude of post-injury wage loss experienced by permanently disabled workers. This analysis will help the AD to determine whether and how to adjust the new PDRS to mitigate the impact on injured workers of diminished future earnings.

Other uses of WCIS have included the creation of tables and reports that provide statistical descriptive information about industry-wide characteristics of injured workers and injuries, such as age, gender, part of body, cause of injury, etc. Data are provided regularly to state agencies such as the Department of Health Services (DHS) and Division of Occupational Safety and Health (DOSH) for selected injuries. WCIS has been used to create special analyses for the Division of Labor Standards and Employment (DLSE), CSHWC, the Bureau of State Audits, and EDD. WCIS data have been used for analyzing claim denial for the Workers' Compensation Insurance Rating Bureau (WCIRB) and for law-enforcement related to fraud. For example, CHSWC and researchers under contract with CHSWC were provided with data that are being used to conduct a study to determine the extent of workers' compensation medical overpayments and underpayments. This study will help the Department of Insurance (CDI) to allocate an appropriate level of resources to detect and evaluate suspected medical provider fraud in California.

Outside researchers, at the University of California San Francisco and Boston University, have been provided with data extracts from WCIS, and DWC is preparing quarterly timeliness of (claims) payments reports by claim administrators at the request of a state legislator. WCIS was used as the source for the physician and injured worker samples for the Year 2 Medical Access Study, which is being conducted pursuant to Labor Code Section 5307.2. It has also been used to produce statistics used to estimate the economic and fiscal impact of updating the Medical Treatment Utilization Schedule (MTUS) and as one of the data sources to test the representativeness of data used by the Lewin Group in their current study on adopting a workers' compensation physician fee schedule based on the Resource-Based Relative Value Scale (RBRVS).

WCIS regulations made mandatory the reporting of medical bill payment data for all workers' compensation claims effective September 2006. With these data supplementing existing WCIS information regularly collected, DWC researchers and others will be able to perform numerous additional types of analyses. Examples in the public policy arena include: the creation, evaluation and maintenance of fee schedules; the study of medical provider treatment patterns; identification of areas of employer, employee, and provider fraud and abuse; and evaluation of the cost, utilization and other related impacts of legislative changes affecting medical and benefit costs to injured workers.

### **Electronic Adjudication Management System**

The Electronic Adjudication Management System (EAMS) is a computer-based system that is designed to simplify and improve the DWC case management process to more efficiently resolve claims, improve the ability to schedule and manage court calendars, allow files to be shared between multiple users and transform paper files into secure electronic files, reducing the need for physical storage space at local DWC offices and the State Records Center.

The goals of EAMS are to better serve injured workers and employers by eliminating redundancy, creating efficiency in the system and making the system more accessible to users, while preserving confidentiality. EAMS will reduce environmental and physical stress, along with injuries to DWC employees, and help guide policy decisions to better distribute resources.

The implementation of EAMS will take place in two stages, beginning with DWC administration and district offices. After the new system has been successfully implemented at the division, EAMS will

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

become accessible to case participants and the general public. EAMS went live internally at the State's 24 district offices on August 25, 2008.

### ***Carve-outs: Alternative Workers' Compensation Systems***

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs.

CHSWC is monitoring the carve-out program, which is administered by DWC.

#### *CHSWC Study of Carve-Outs*

CHSWC engaged in a study to identify the various methods of alternative dispute resolution (ADR) that are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

Since carve-out programs have operated only since the mid-1990s, the data collected are preliminary. The study team found indications that: the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid RTW have not occurred; and that the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have not occurred.

For further information...



How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers." CHSWC (2006). Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html).

#### *Impact of Senate Bill 228*

Senate Bill (SB) 228 adds Labor Code Section 3201.7, establishing the creation of a new carve-out program for any unionized industry that meets the requirements. This is in addition to the existing carve-out in the construction industry (already covered in current law by Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the AD. The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is recognized or certified as the exclusive bargaining representative that establishes any of the following:
  - An ADR system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
  - The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

- The use of an agreed, limited list of qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
- A joint labor-management safety committee.
- A light-duty, modified job or RTW program.
- A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more equals \$50,000, and the minimum group premium equals \$500,000.
- Any agreement must include right of counsel throughout the ADR process.

### *Impact of Senate Bill 899*

Construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

Recognizing that many cities and counties, as well as private industries, are interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the workers' compensation system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers; policymakers; attorneys; and health care providers.

The conference provided an opportunity for the health and safety and workers' compensation communities and the public to discuss and share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

### *Carve-Out Participation*

As shown in the following table, participation in the carve-out program has grown, with significant increases in the number of employees, work hours, and amount of payroll.

**Table: Participation in Carve-Out Program**

Carve Out Participation	1995	1996	1997	1998	1999	2000*	2001*	2002	2003*	2004*	2005*	2006	2007
Employers	242	277	550	683	442	260	143	512	316	462	739	981	1,087
Work Hours (in millions)	6.9	11.6	10.4	18.5	24.8	16.9	7.9	29.4	22.9	25.4	24.5	55.6	66.1
Employees (full-time equivalent)	3,450	5,822	5,186	9,250	12,395	8,448	3,949	14,691	11,449	12,700	12,254	27,784	33,056
Payroll (in million \$)	158	272	243	415	585	443	202	634	624	1,200	966	1,378	1,988

\* Please note that data are incomplete

Source: DWC



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### *2006 and 2007 Aggregate Data Analysis of Carve-out Programs*

DWC provided the following aggregate data analysis of carve-out programs for the 2006 and 2007 calendar years.

#### *Person hours and payroll covered by agreements filed*

Carve-out programs reported that for the 2006 calendar year, they covered 55,569,530 work hours and \$1,377,706,764 in payroll.

For the 2007 calendar year, carve-out programs reported that they covered 66,112,418 work hours and \$1,987,824,737 in payroll.

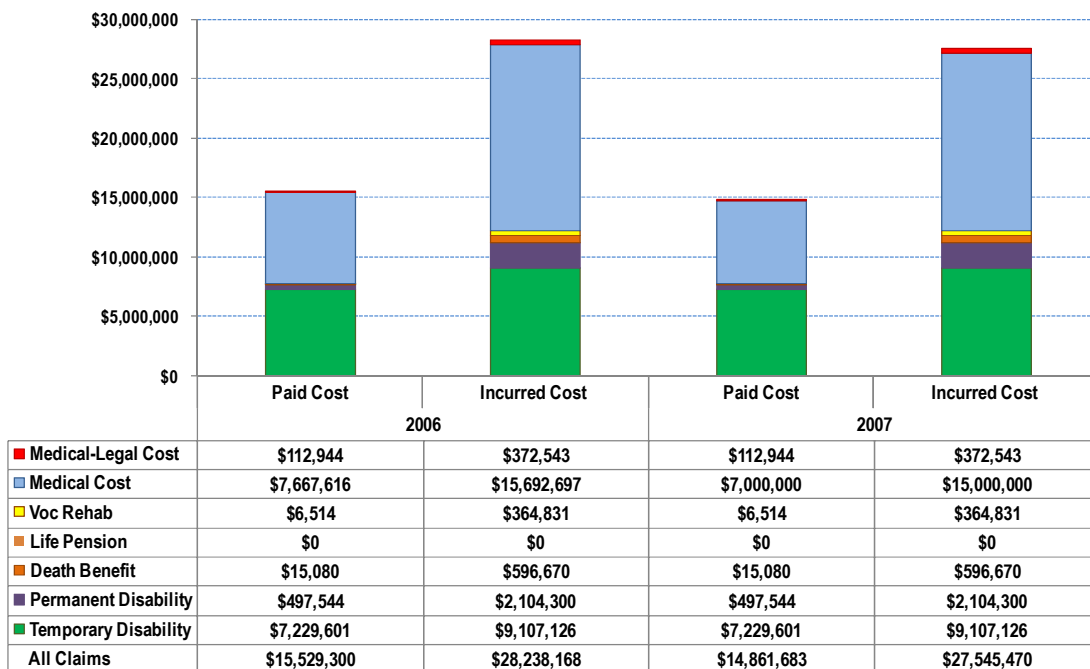
#### *Number of claims filed*

During 2006, there were a total of 2,664 claims filed, of which 1,418 (53.2 percent) claims were medical-only claims, and 1,246 (46.8 percent) were indemnity claims.

#### *Paid, incurred and average cost per claim*

The chart below breaks down paid and incurred costs by claim component for all claims combined. The paid costs for claims filed in 2007 totaled \$14,861,683 or a 4 percent decrease from 2006, while the total incurred costs were \$27,545,470.

**Total Paid and Incurred Cost by Claim Component, 2006 and 2007**

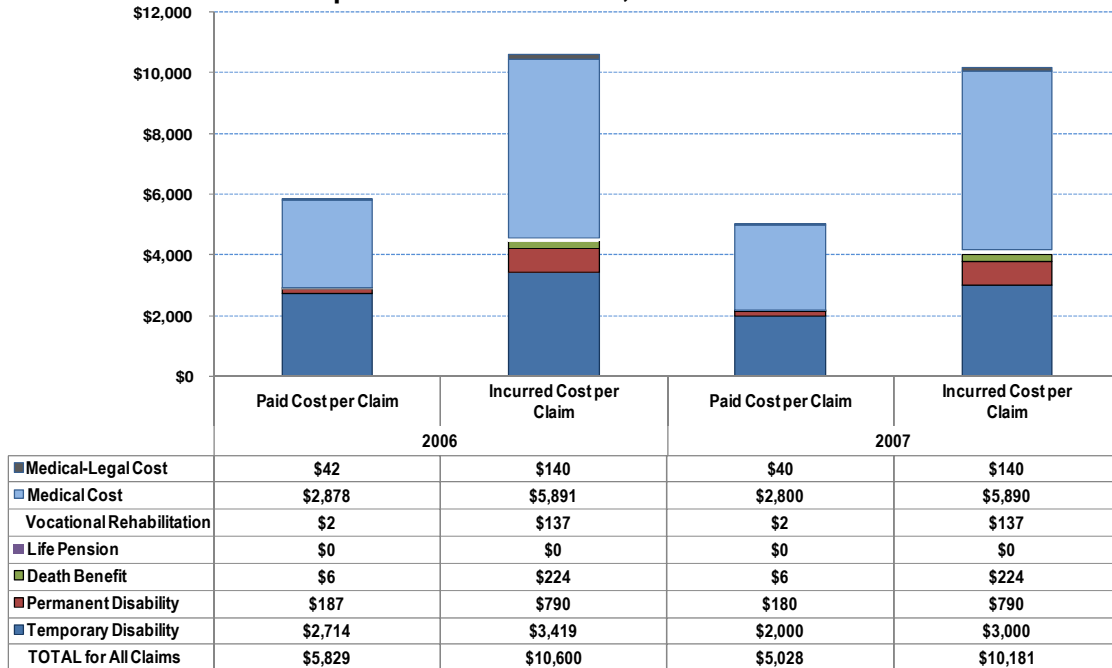


Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

The chart below shows the average paid and incurred cost per claim by cost components across all claims.

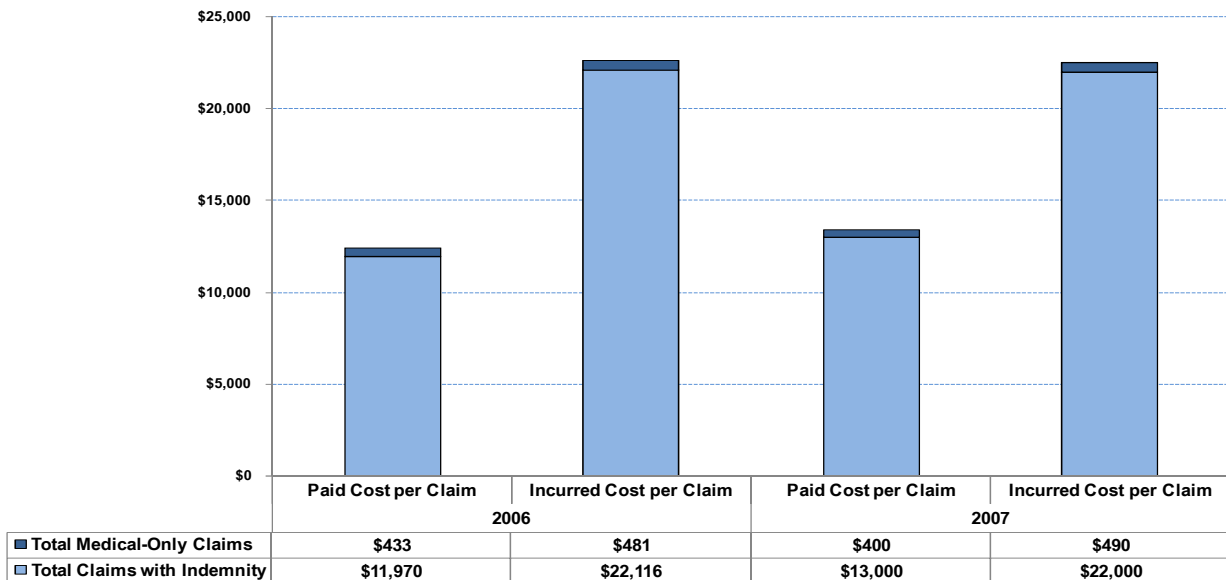
**Average Paid and Incurred Cost per Claim Component by Cost Components for All Claims, 2006 and 2007**



DataSource: DWC

In contrast, the following chart shows the cost by the type of claims filed.

**Average Paid and Incurred Cost by Claim Type, 2006 and 2007**



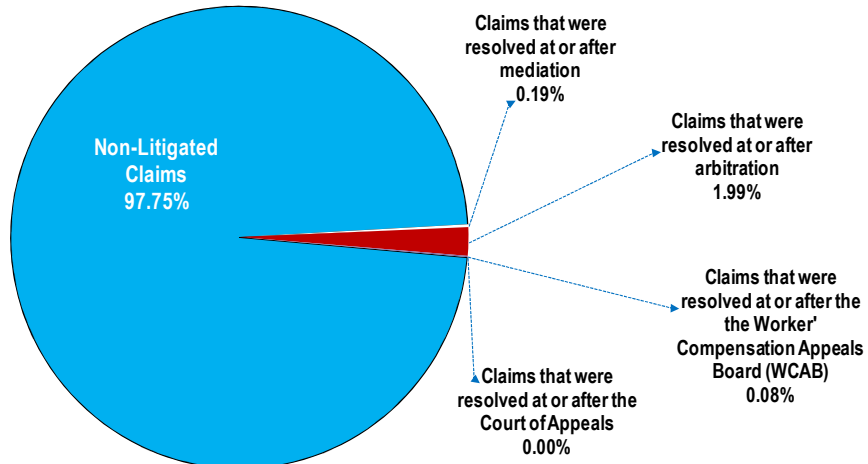
Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### *Number of litigated claims*

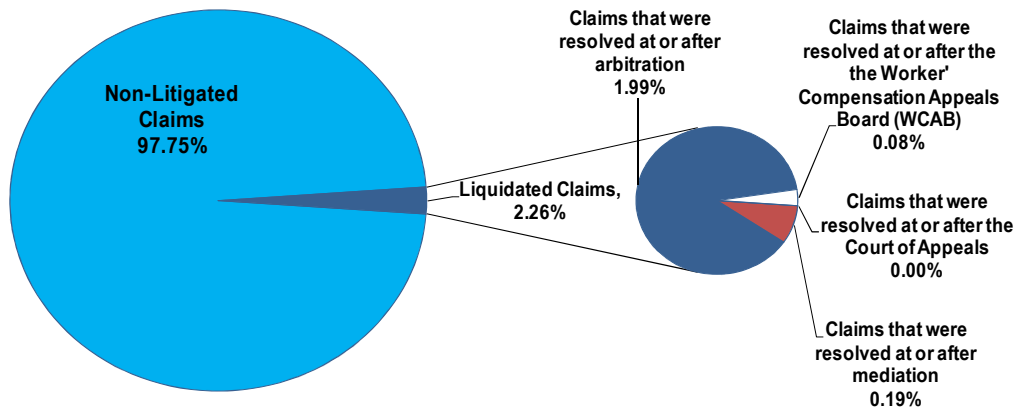
The two charts below show the claims resolved by stage of litigation process as percent of total claims and as percent of total litigated claims in carve-outs in 2006.

**Litigated Claims as Percent of Total Claims in Carve-Outs  
2006**



Data Source: DWC

**Claims Resolved by Stage of Litigation Process as Percent of Total Claims,  
2006**



Data Source: DWC

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### *Number of contested claims resolved prior to arbitration*

Of the 2,664 claims filed in 2006, the ADR/carve-out programs reported that 1,873 or 70.3 percent were resolved, per Section 10203(b) (9).<sup>16</sup> This means that 791 or 29.7 percent of the claims filed did not have a determination of ultimate liability more than six months after the end of 2006. Of the resolutions, 1,601 or 85.5 percent of the cases were resolved prior to arbitration. Ninety-eight or 5.2 percent of the resolved claims were denied for reasons of compensability.

### *Safety history*

In 2006, 51 injuries and illnesses reports were filed with the U.S. Department of Labor using OSHA Form 300<sup>17</sup> for employees covered under the carve-out program.

### *Number of workers participating in vocational rehabilitation programs*

Seventy-one (2.7 percent) workers participated in vocational rehabilitation programs.

### *Number of workers participating in light-duty programs*

One hundred sixty-four (6.2 percent) workers participated in a light-duty program.

### *Worker satisfaction*

Section 3201.7(h) of the Labor Code requires that DWC include information on worker satisfaction in its annual report to the Legislature on non-construction ADR programs. However, for 2006, neither of the two employers operating a 3201.7 program reported on worker satisfaction.

A listing of employers and unions in carve-out agreements follows.

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<sup>16</sup> "Resolved" means that ultimate liability has been determined, even though payments for the claim may be made beyond the reporting period.

<sup>17</sup> OSHA requires employers to file an injury and or illness Form 300 if work-related injuries result in death, a loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid.

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Status of Carve-out Agreements

The following charts show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by DWC.

#### Construction Industry Carve-out Participants as of May 8, 2008

##### Labor Code Section 3201.5

\*Key: 1 = one employer, one union; 2 = one union, multi employer; 3 = project labor agreement

No.	Union	Company	Exp. Date
1. (3)	CA Building & Construction Trades Council	Metropolitan Water District So. CA - Diamond Valley Lake	11/7/06
2. (2)	International Brotherhood of Electrical Workers (IBEW)	National Electrical Contractors Association (NECA)	8/14/10
3. (2)	So. CA District of Carpenters & 19 local unions	6 multi-employer groups - 1000 contractors	8/14/10
4. (2)	So. CA Pipe Trades Council 16	Multi employer - Plumbing & Piping Industry Council	8/24/10
5. (1)	Steamfitters Local 250	Cherne - two projects completed in 1996	Complete
6. (1)	International Union of Petroleum & Industrial Workers	TIMEC Co., Inc./TIMEC So. CA., Inc.	7/31/10
7. (3)	Contra Costa Building & Construction Trades Council	Contra Costa Water District - Los Vaqueros	Complete
8. (2)	So. CA District Council of Laborers	Association General Contractors of CA, Building Industry Association; So. CA, So. CA Contractors' Association; Engineering Contractors' Association.	7/31/08
9. (3)	CA Building & Construction Trades Council	Metropolitan Water District So. CA Inland Feeder Parsons	Ended 12/31/02
10. (3)	Building & Construction Trades Council of Alameda County	Parsons Constructors, Inc. National Ignition Facility - Lawrence Livermore	9/23/09 ended 7/2/06
11. (2)	District Council of Painters	LA Painting & Decorating Contractors' Association	10/28/09
12. (1)	Plumbing & Pipefitting Local 342	Cherne Contracting - Chevron Base Oil 2000 project	Complete
13. (3)	LA Building & Construction Trades Council AFL-CIO	Cherne Contracting - ARCO	Complete
14. (2)	Operating Engineers Local 12	So. CA Contractors' Association	4/1/11
15. (2)	Sheet Metal International Union	Sheet Metal-A/C Contractors National Association	4/1/11
16. (3)	Building & Construction Trades Council San Diego	San Diego County Water Authority Emergency Storage Project	2/20/09
17. (3)	LA County Building & Construction Trades Council	Cherne Contracting - Equilon Refinery - Wilmington	3/1/07
18. (3)	Plumbers & Steamfitters	Cherne Contracting - Chevron Refinery - Richmond	7/1/05
19. (3)	Plumbers & Steamfitters	Cherne Contracting - Tesoro Refinery - Martinez	7/1/05
20. (3)	LA/Orange Counties Building & Construction Trade Council	Cherne Contracting - Chevron Refinery - El Segundo	7/26/05

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No.	Union	Company	Exp. Date
21. (2)	District Council of Iron Workers- State CA & Vicinity	California Ironworker Employers Council	2/25/09
22. (2)	Sheet Metal Workers International Association #105	<i>Sheet Metal &amp; A/C Labor Management Safety Oversight Committee (LMSOC)</i>	4/17/09
23. (2)	United Union of Roofers, Waterproofers & Allied workers, Local 36 and 220	Union Roofing Contractors Association	7/31/08
24. (2)	United Union of Roofers, Waterproofers & Allied Workers, Locals 27, 40, 81 & 95	Associated Roofing Contractors of the Bay Area Counties	7/31/09
25. (2)	United Association -Journeyman & Apprentices - Plumbers & Pipefitters, Local #447	No.CA Mechanical Contractors Association & Association Plumbing & Mechanical Contractors of Sacramento. Inc.	11/7/09
26. (2)	Operatives Plasterers & Cement Masons International Association, Local 500 & 600	So. CA Contractors Association, Inc.	4/1/11
27. (1)	International Unions Public & Industrial Workers	Irwin Industries, Inc.	3/23/10
28. (2)	PIPE Trades District Council.# 36	Mechanical Contractors Council of Central CA	4/14/10
29. (2)	No. CA Carpenters Regional Council	Basic Crafts Workers' Compensation Benefits Trust	8/30/10
30. (2)	No. CA District Council of Laborers	Basic Crafts Workers' Compensation Benefits Trust	8/30/10
31. (2)	Operating Engineers Local 3	Basic Crafts Workers' Compensation Benefits Trust	8/30/10
32. (1)	Industrial, Professional & Technical Workers	Irish Construction	12/20/10
33. (3)	Building Trades Council of Los Angeles Orange County	Los Angeles Community College District Prop A & AA Facilities Project	5/6/11

Key: 1 = 1 employer, 1 union; 2 = 1 union, multi employer; 3 = project labor agreement

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## Non-Construction Industry Carve-Out Participants as of July 31, 2008 (Labor Code Section 3201.7)

No.	Union	Company	Permission to Negotiate Date/Expires	Application for Recognition of Agreement	Agreement Recognition Letter Date
1.	United Food & Commercial Workers Union Local 324	Super A Foods-2 locations 76 employees	09/01/04-09/01/05		
2.	United Food & Commercial Workers Union Local 1167	Super A Foods – Meat Department 8 employees	09/01/04-09/01/05		
3.	Teamsters Cal. State Council-Cannery & Food Processing Unions, IBT, AFL-CIO	Cal. Processors, Inc. Multi-Employer Bargaining Representative	7-06-04/ 7-05-05		
4.	United Food & Commercial Workers Union Local 770	Super A Foods – 10 locations - ~ 283 members	09/01/04-09/01/05		
5.	United Food & Commercial Workers Union Local 1036	Super A Foods - All employees, except those engaged in janitorial work or covered under a CBA w/Culinary Workers and demonstrators	09/01/04-09/01/05		
6.	Operating Engineers- Loc 3 Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
7.	Laborers - Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
8.	Carpenters- Non-Construction	Basic Crafts Workers' Compensation Benefits Trust Fund	12/09/04-12/09/05	02/15/05	02/28/05
9.	United Food & Commercial Workers Union Local 588	Mainstay Business Solutions	8/11/05-8/11/06	09/02/05	09/12/05
10.	Teamsters Local 952	Orange County Transportation Authority Coach Operators	04/17/06-04/17/07		

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Non-Construction Carve-Out Participants as of July 31, 2008 (continued) (Labor Code Section 3201.7)

No.	Union	Company	Permission to Negotiate Date/Expires	Application for Recognition of Agreement	Agreement Recognition Letter Date
11.	Teamsters Local 630	SYSCO Food Services	06/22/07-06/22/08		
12.	Teamsters Local 848	SYSCO Food Services	06/22/07-06/22/08		
13.	Teamsters Local 952	Orange County Transportation Authority Maintenance Workers	07/31/06-07/31/07		
14.	Long Beach Peace Officers' Assoc. & Long Beach Firefighters Assoc. Local 372/	City of Long Beach	12/11/06-12/11/07	11/2/07	11/13/07
15.	SEIU Local 1877	Various Maintenance Companies	04/13/07-04/13/08	2/12/08	2/28/08
16.	SEIU Local 721	City of LA	06/18/07-06/18/08	4/15/08	5/8/08
17.	United Food & Commercial Workers Union (UFCW) Local 5	Berkeley Bowl	7/7/08-7/7/09		
18.	UFCW Local 5	Smoked Prime Meats, Inc.	7/7/08-7/7/09		
19.	UFCW Local 5	Milan Salami	7/7/08-7/7/09		

*For further information...*



The latest information on carve-outs may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select "workers' compensation," then "Division of Workers' Compensation," then "Construction Industry Carve-Out Programs" (under "DWC/WCAB Organization and Offices").



"How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers." CHSWC (2006). Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html).



"Carve-outs: A Guidebook for Unions and Employers in Workers' Compensation." CHSWC (2004). Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html).



CHSWC Report: "Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999). Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html).



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### ANTI-FRAUD ACTIVITIES

#### ***Background***

During the past decade, there has been a dedicated and rapidly growing campaign in California against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the CDI Fraud Division, as well as applicable Insurance Code and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

#### ***Suspected Fraudulent Claims***

Suspected Fraudulent Claims (SFCs) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public. The number of SFCs represents only a small portion that has been reported by the insurers and does not necessarily reflect the whole picture of fraud since many fraudulent activities have not been identified or investigated.

According to CDI Fraud Division, the number of suspected fraudulent claims increased near the end of fiscal year 2003-2004. Several reasons for this increase include:

- The extensive efforts to provide training to the insurance claim adjusters and Special Investigation Unit (SIU) personnel by the Fraud Division and District Attorneys.
- Changing submission of SFCs by filling out the FD-1 Form electronically through the Internet.
- The Department promulgated new regulations to help insurance carriers step up their anti-fraud efforts and become more effective in identifying, investigating, and reporting workers' compensation fraud. A work plan to increase the number of audits performed by the Fraud Division SIU Compliance Unit has been established and continues with an aggressive outreach plan to educate the public on anti-fraud efforts and how to identify and report fraud. This has ensured a more consistent approach to the oversight and monitoring of the SIU functions with the primary insurers as well as the subsidiary companies.
- Finally, CDI is strengthening its working relationship with WCIRB to support the Department's anti-fraud efforts.

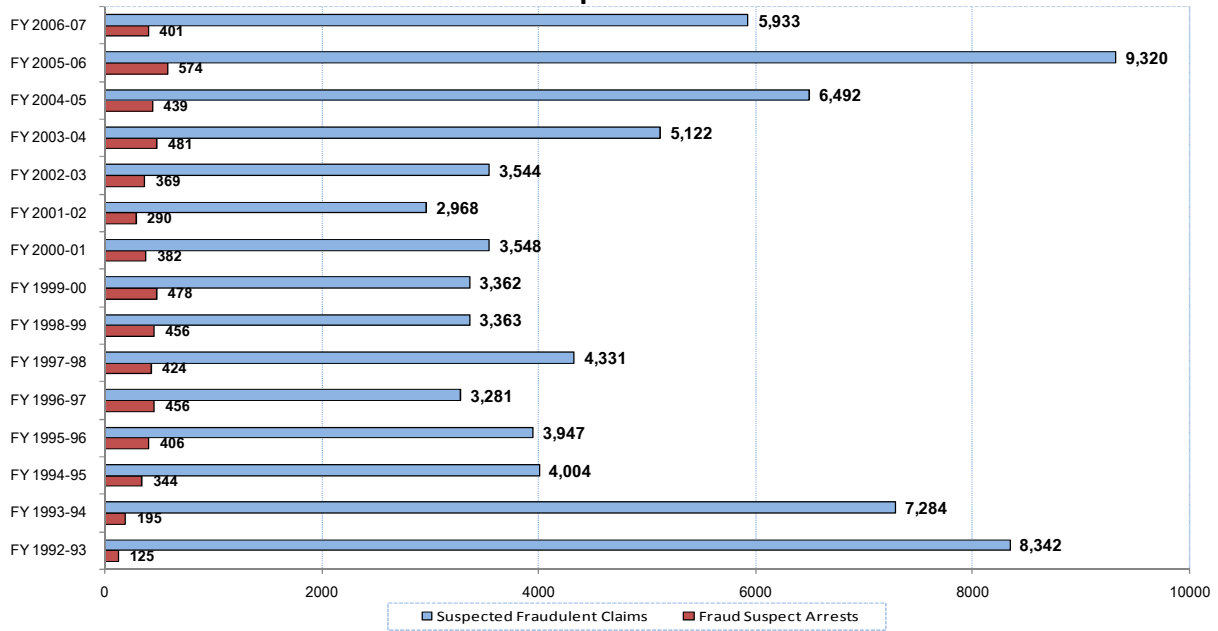
For fiscal year 2006-07, the total number of SFCs reported is 5,933.

#### **Workers' Compensation Fraud Suspect Arrests**

After a fraud referral, an investigation must take place before any warrants are issued or arrests are made. The time for investigation ranges from a few months to a few years depending on the complexity of the caseload. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year. (See the chart below.)

## WORKERS' COMPENSATION SYSTEM PERFORMANCE

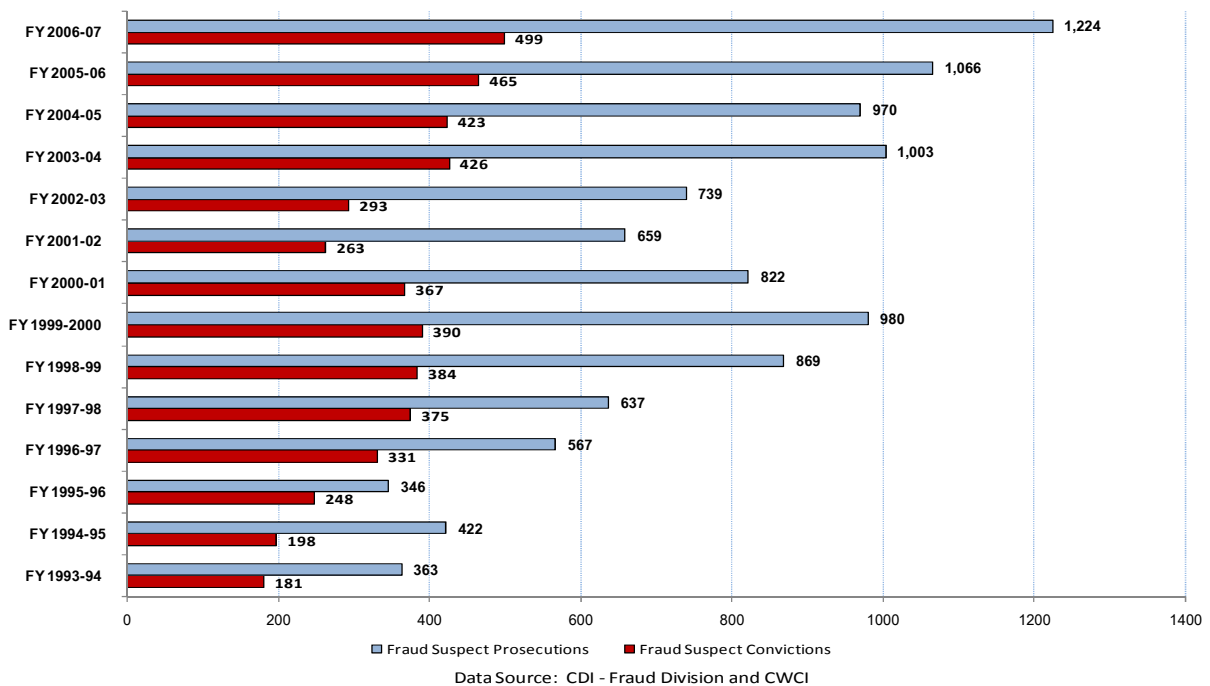
### Suspected Workers' Compensation Fraudulent Claims and Suspect Arrests



### Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI [Bulletin\[s\]](#), the number of workers' compensation fraud suspects *convicted* annually while many cases are still pending in court is reported in the chart below.

### Workers' Compensation Fraud Suspect Prosecutions and Convictions



## WORKERS' COMPENSATION SYSTEM PERFORMANCE

### Workers' Compensation Fraud Investigations

#### *Types of Workers' Compensation Fraud Investigations*

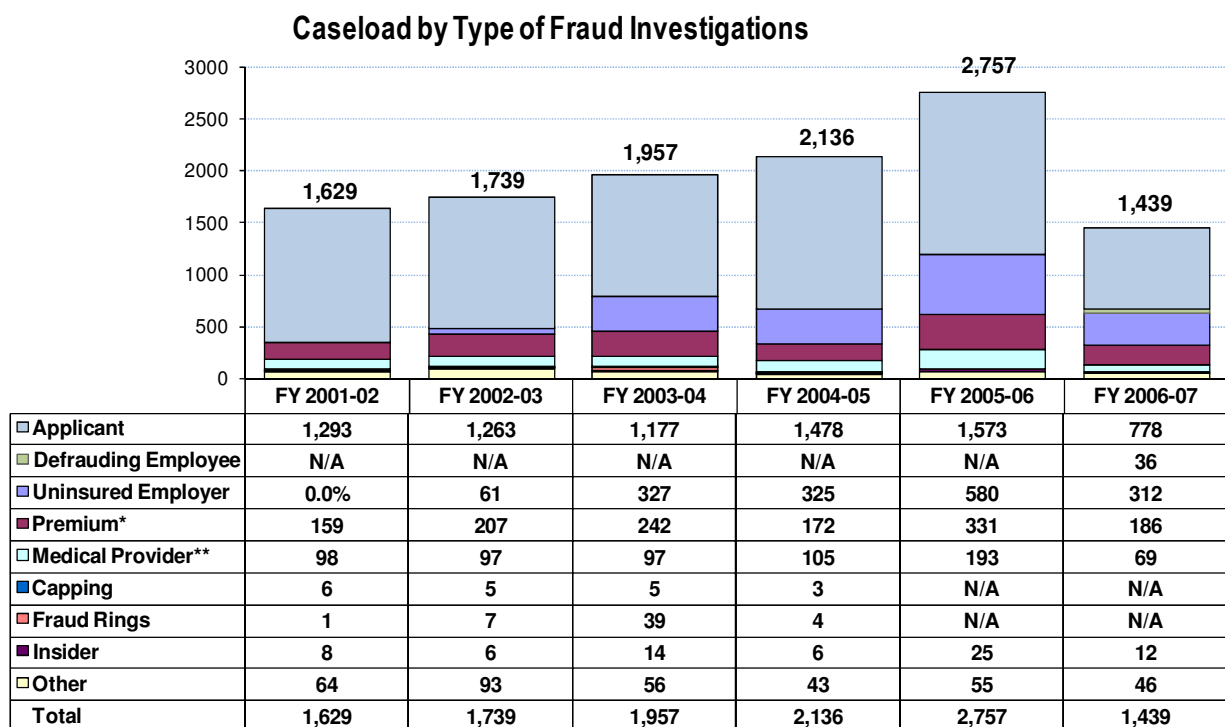
The two charts below indicate the number and types of investigations opened and carried from fiscal-year 2001-02 to 2006-07 reported by District Attorneys. Applicant fraud appears to be the area generating the most cases followed by premium fraud and medical provider fraud.

Geographically, the great majority of suspected fraud cases in 2006 came from Los Angeles County (28 percent) followed by Orange County (8 percent) and then Riverside County (7 percent).

Some of the categories for fraud-related investigations were changed in the fiscal years 2005-2006 and 2006-2007 as reflected in the charts below.

#### *Trends in Workers' Compensation Fraud Investigations*

The chart below shows that there was a 69 percent increase in workers' compensation fraud investigations from FY 2001-02 to FY 2005-06 followed by 48 percent decrease from FY 2005-06 to FY 2006-07.



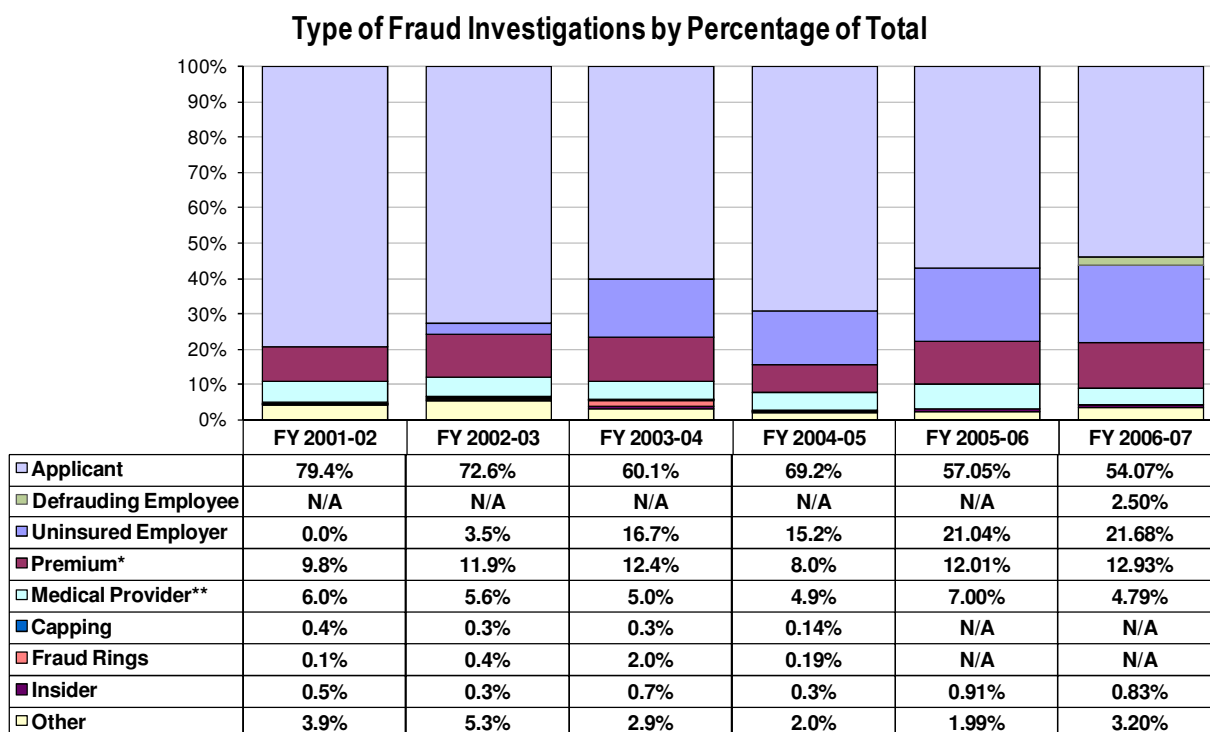
\* For FY 2006-2007, Includes Misclassification, Underreported Wages, and X-Mod evasion

\*\* For FY 2005-06, Includes Capping and Fraud Rings and for 2006-07 includes Capping, Fraud Rings, Legal Provider, and Treatment

Data Source: California Department of Insurance, Fraud Division

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As seen in the chart below, the focus of the investigations has been changing. Applicant fraud investigations have dropped from nearly 80 percent of the total in 2001-02 to about 54 percent of the total number of investigations in 2006-07. At the same time, there has been an increase in the percentage of investigations of uninsured employers and premium fraud. The percentage of investigations of medical provider fraud has decreased from 7 percent to 4.8 percent between 2005-06 and 2006-07.



\* For FY 2006-2007, Includes Misclassification, Underreported Wages, and X-Mod evasion

\*\* For FY 2005-06, Includes Capping and Fraud Rings and for 2006-07, includes Capping, Fraud Rings, Legal Provider, and Treatment

Data Source: California Department of Insurance, Fraud Division

### Underground Economy

While most California businesses comply with health, safety and workers' compensation regulations, there are businesses that do not. Those businesses are operating in the "underground economy." Such businesses may not have all their employees on the official company payroll or may not report wages paid to employees that reflect their real job duties. Businesses in the underground economy are therefore competing unfairly with those that comply with the laws. According to EDD, the California underground economy is estimated at \$60 billion to \$140 billion.<sup>18</sup>

### Potential Areas for Improvement in Workers' Compensation Anti-Fraud Efforts

CHSWC has engaged in many studies that focus on improving workers' compensation anti-fraud efforts. For further information on these studies please see the Special Report on Anti-Fraud and the Projects and Studies sections of this report.

<sup>18</sup> [http://www.edd.ca.gov/taxrep/txueoind.htm#What\\_Does\\_It\\_Cost\\_You](http://www.edd.ca.gov/taxrep/txueoind.htm#What_Does_It_Cost_You)

## **WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES**

### **Occupational Injury and Illness Prevention Efforts**

Workplace safety and health is of primary importance and the shared goal of all Californians. Ongoing cooperative efforts among workers, employers, employer and labor organizations, government agencies, health and safety professionals, independent researchers, and the public have resulted in significant reductions in workplace injuries, illnesses and deaths.

This section will discuss the numbers and incidence rates of occupational injuries and illnesses, injuries and illnesses by occupation and other factors, and the efforts to prevent occupational injuries and illnesses. Also included is an overview of the requirements and methods to record and report occupational injuries and illnesses in the United States and California.

Where data are available, comparisons among private industry, state government and local government are also included.

### **Occupational Injuries, Illnesses and Fatalities**

The numbers of occupational injuries, illnesses and fatalities in the private sector (private industry) and the public sector (state and local government) for the past several years are displayed and discussed in this subsection. Fatality data for 2007 are preliminary as of September 2008.

Please note that “lost-work-time” occupational injury and illness cases involve days away from work, job transfer, or days of restricted work activity, and that days-away-from-work cases involve days away from work, whether or not there is also job transfer or restricted work activity.

The National Academy of Social Insurance (NASI) estimated that there were 130.3 million workers covered by workers’ compensation in the United States in 2006, including 15.2 million in California.

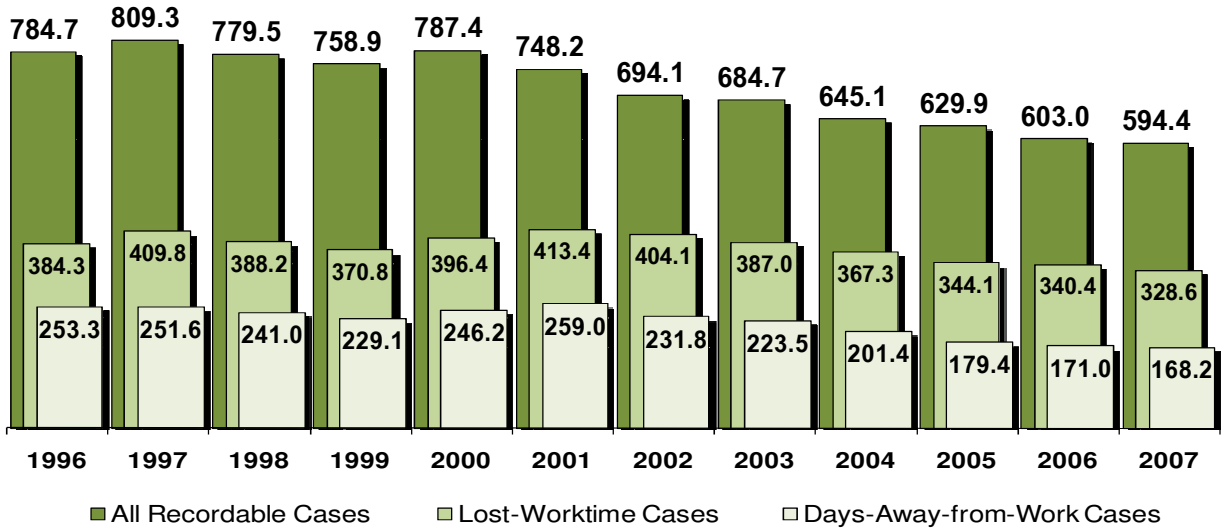
### **Public and Private Sectors Compared**

#### *Non-Fatal Occupational Injuries and Illnesses*

The following chart shows occupational injuries and illnesses in California’s private industry, state government and local government. Occupational injuries and illnesses in California have decreased noticeably in the past few years. As shown in the following chart, the number of recordable occupational injury and illness cases, number of lost-work-time cases, and number of days-away-from-work cases have all declined from 2000 to 2007.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### California Non-Fatal Occupational Injuries and Illnesses Private Industry, State and Local Governments - Thousands of Cases

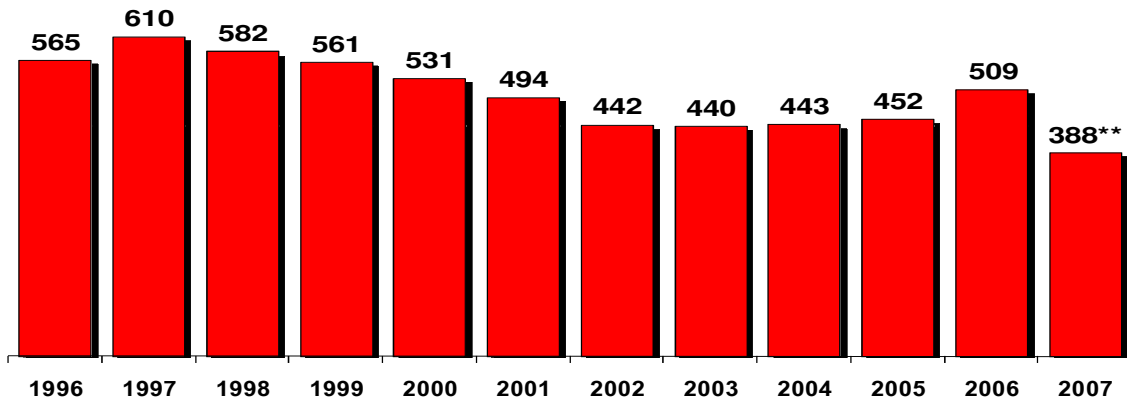


Source: DIR Division of Labor Statistics and Research

#### *Fatal Occupational Injuries and Illnesses*

Fatal occupational injuries and illnesses in California have also decreased significantly as depicted in the chart below. Fatal occupational injuries and illnesses in California declined by 27.4 percent from 1997 to 2003 and increased by 15.7 percent from 2003 to 2006. Between 2006 and 2007, fatal injuries decreased by 23.8 percent, the largest decrease within the past 10 years.

### California Fatal Occupational Injuries and Illnesses Private Industry, State and Local Governments\*



\* Total, excluding Federal Government  
\*\* Preliminary data

Data Source: DIR - DLSR and BLS

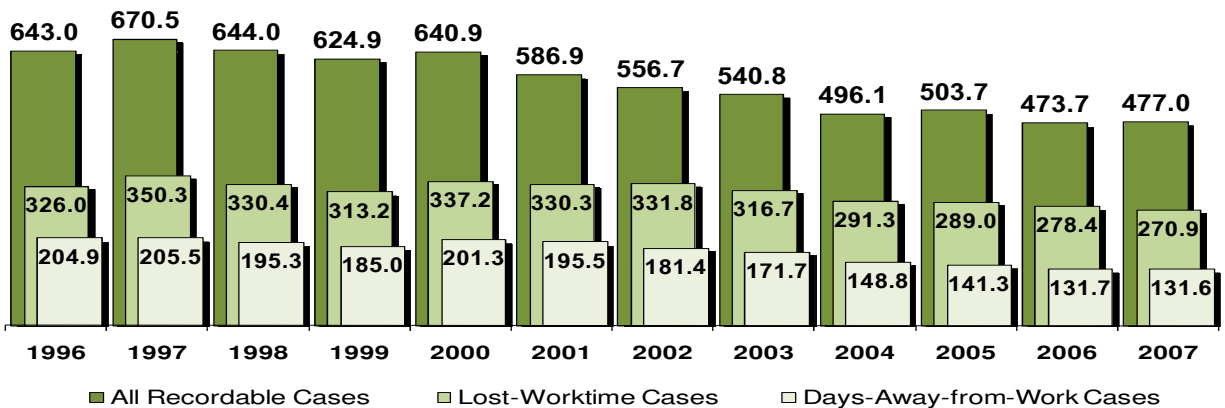
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Private Sector

#### *Non-Fatal Occupational Injuries and Illnesses*

Occupational injuries and illnesses in California's private industry have also decreased noticeably in the past few years. The total number of recordable injury and illness cases dropped by 18.7 percent, the number of lost-work-time cases declined by 18 percent, and the number of days-away-from-work cases decreased by 32.7 percent, all from 2001 to 2007.

**California Non-Fatal Occupational Injuries and Illnesses  
Private Industry - Thousands of Cases**

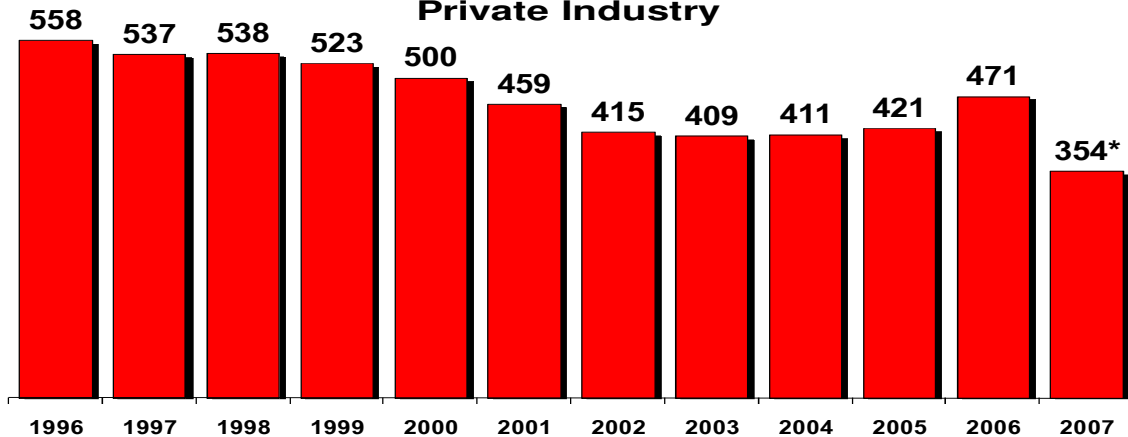


Source: DIR Division of Labor Statistics and Research

#### *Fatal Occupational Injuries and Illnesses*

From 1997 to 2003, fatal injuries in private industry decreased by 26.7 percent and increased by 15.2 percent from 2003 to 2006. The number of fatal injuries decreased by 24.8 percent in private industry from 2006 to 2007.

**California Fatal Occupational Injuries and Illnesses  
Private Industry**



\* Preliminary data

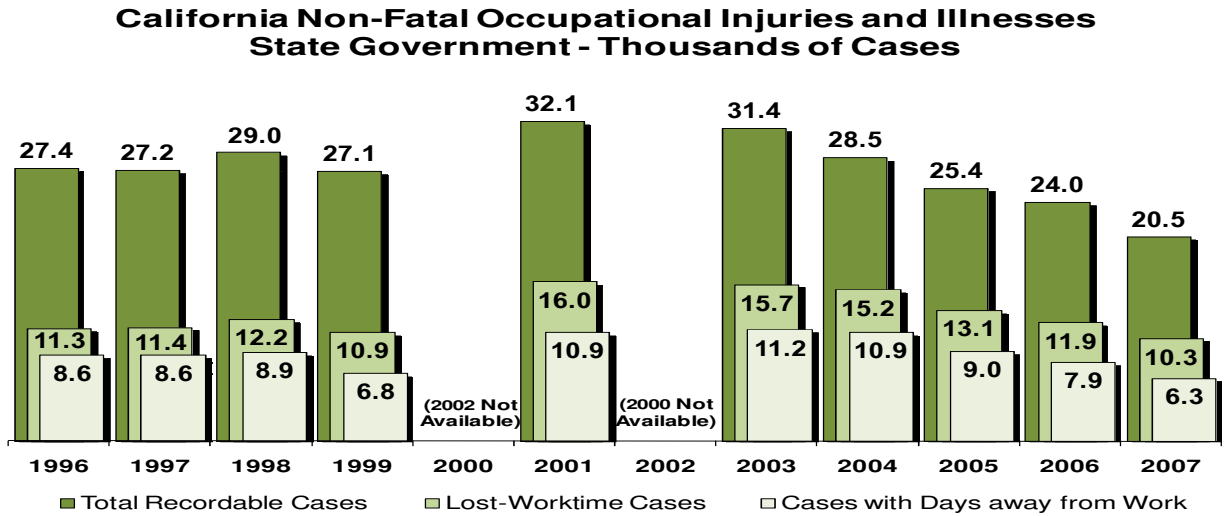
Source: DIR -DLRS and BLS

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Public Sector – State Government

#### *Non-Fatal Occupational Injuries and Illnesses*

In contrast to private industry, the numbers of non-fatal occupational injuries and illnesses in state government have changed less appreciably in the past eight years, as shown on the following chart. It should be noted that many state and local government occupations are high-risk, such as law enforcement, fire fighting, rescue, and other public safety operations. However, between 2003 and 2007, the total number of cases declined by about 34.7 percent.



#### *Fatal Occupational Injuries and Illnesses*

Fatal occupational injuries and illnesses in California state government have decreased since the mid-1990s. The number of annual fatalities decreased from 16 in 1996 to 6 in 2000; then, the average number of fatalities of 6.5 from 2000 to 2005 increased to an average of 10 from 2005 to 2007, as shown on the following chart.





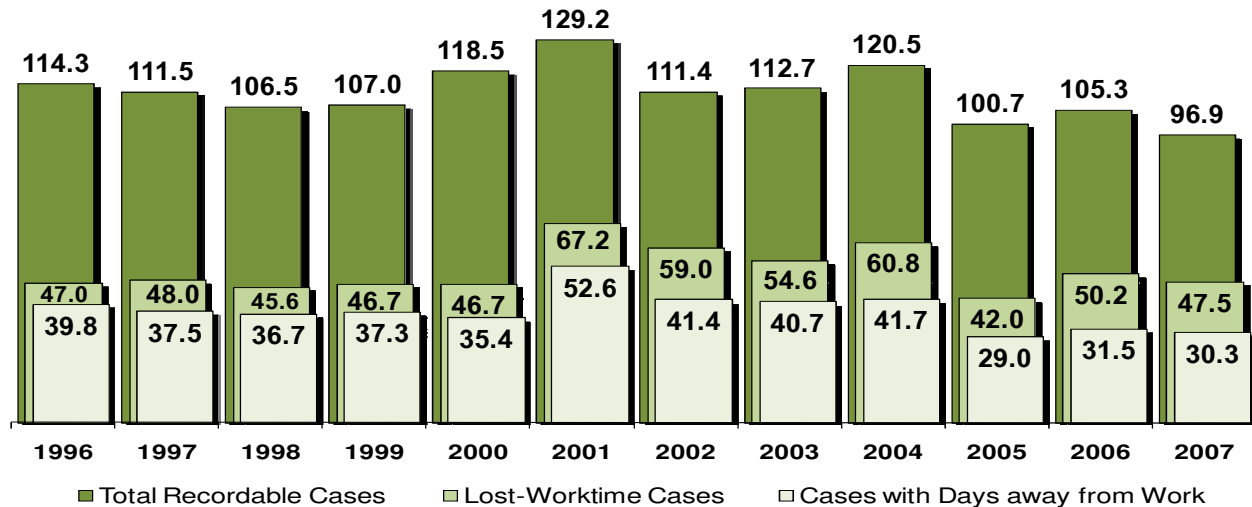
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Public Sector - Local Government

#### *Non-Fatal Occupational Injuries and Illnesses*

The total number of non-fatal occupational injuries and illnesses in local governments has decreased from the 2004 to 2005 by 16 percent, increased by 4.6 percent from 2005 to 2006, and again decreased by 8 percent from 2006 to 2007.

#### **California Non-Fatal Occupational Injuries and Illnesses Local Government - Thousands of Cases**

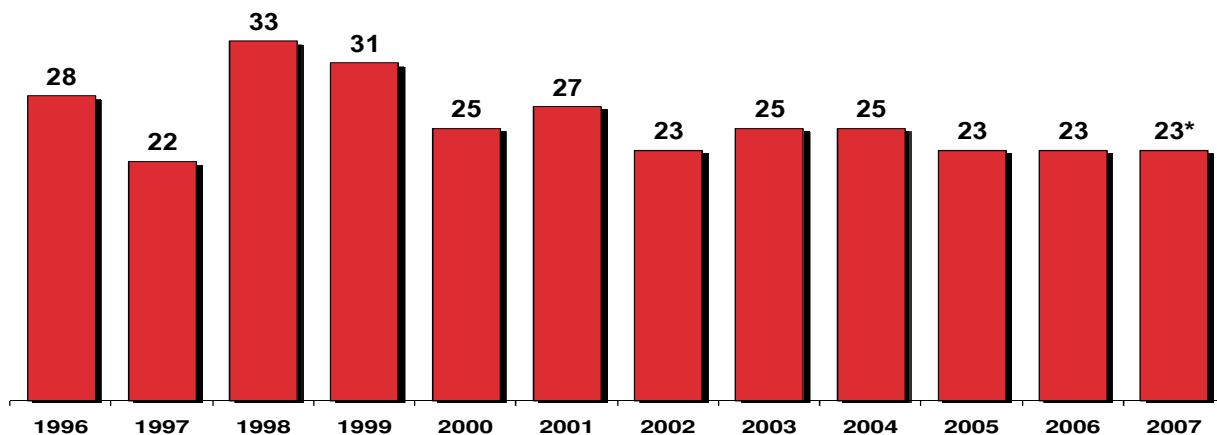


Source: DIR Division of Labor Statistics and Research

#### *Fatal Occupational Injuries and Illnesses*

The number of fatal occupational injuries and illnesses in California's local governments from 1996 to 1999 averaged 28.5, while from 2000 to 2007, the annual average was 24.25.

#### **California Fatal Occupational Injuries and Illnesses Local Government**



\* Preliminary data

Source: DIR - DLSR and BLS

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Occupational Injury and Illness Incidence Rates

#### *Public and Private Sectors Compared*

From 1996 to 2007, incidence rates for all cases and lost-work-time cases in California declined. Between 1999 and 2002, the incidence rates for days-away-from-work cases remained relatively the same but have declined since 2002.

**California Occupational Injury and Illness Incidence Rates  
(Cases per 100 Full-Time Employees)  
Private Industry, State and Local Governments**

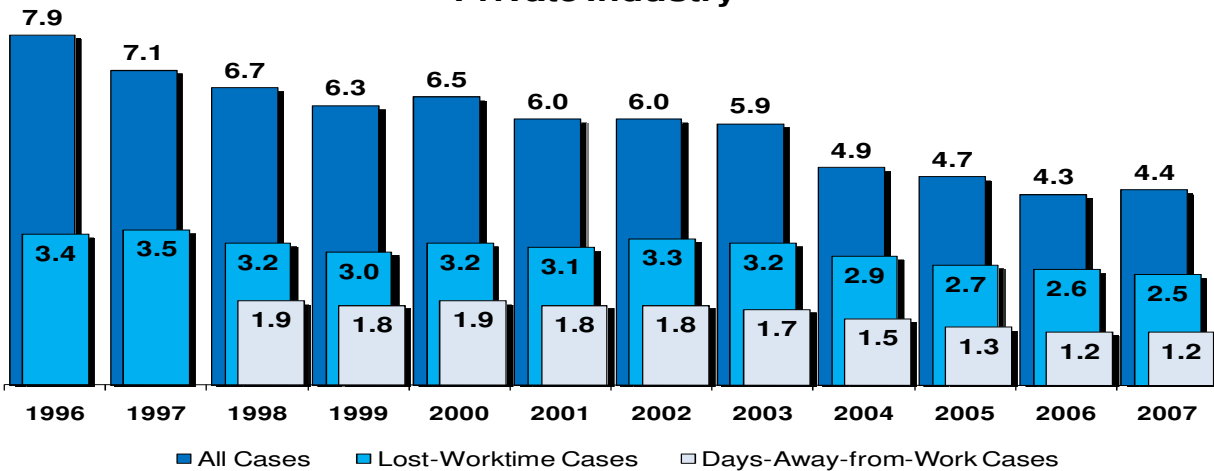


Data Source: DIR - Department of Labor Statistics and Research

#### *Private Sector*

From 1996 to 2007, the occupational injury and illness incidence rate for all cases in California's private industry declined from 7.9 to 4.4, a decrease of 44.3 percent, while the incidence rate for lost-time cases dropped from 3.4 to 2.5, a decrease of 26.5 percent.

**California Occupational Injury and Illness Incidence Rates  
(Cases per 100 Full-Time Employees)  
Private Industry**

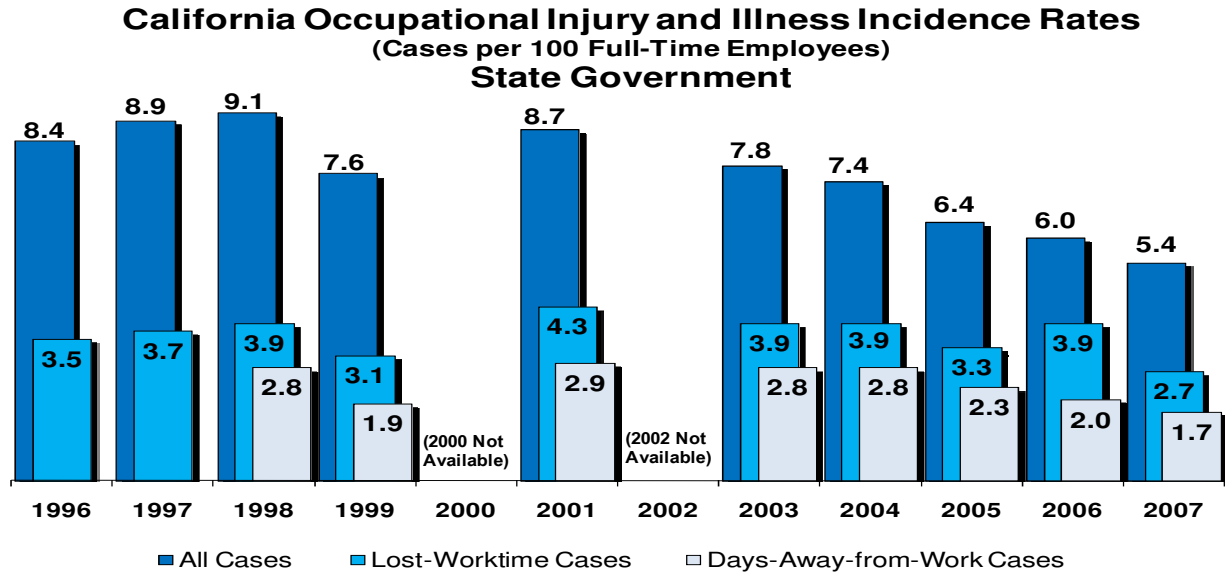


Source: DIR Division of Labor Statistics and Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

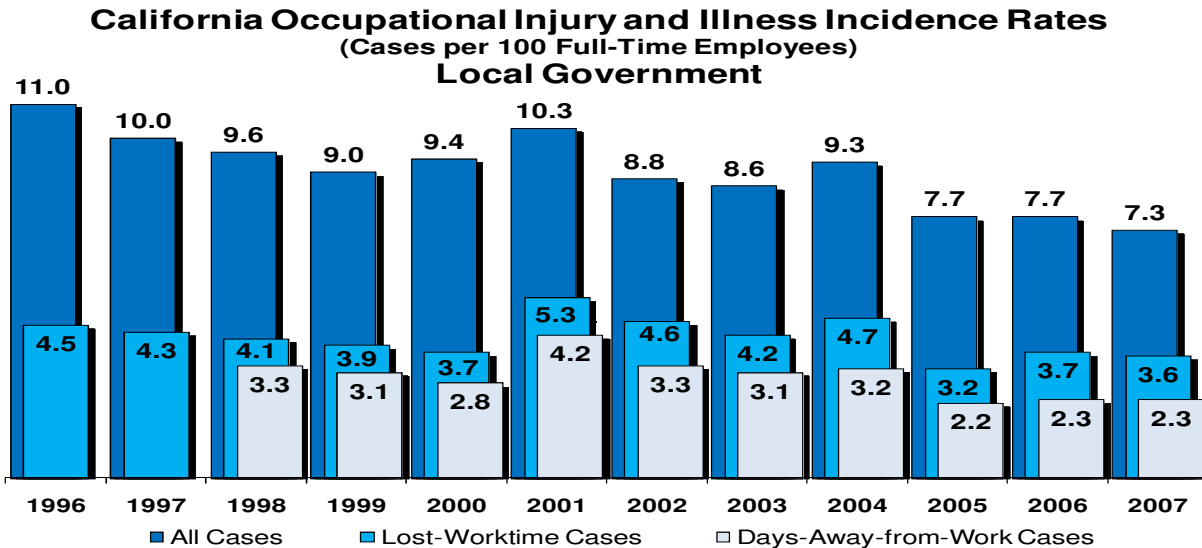
### Public Sector - State Government

California state government occupational injury and illness incidence rates increased by 5 percent from 1996 to 1998 and then have declined by 41 percent between 1998 and 2007.



### Public Sector – Local Government

Unlike injury and illness rates for California state government where incidence rates have been generally declining for the past decade, local government occupational injury and illness incidence rates decreased from 1996 to 1999, increased through 2001, decreased through 2003, and then increased again in 2004. From 2004 to 2007, injury and illness rates decreased from 9.3 to 7.3 per 100 full-time employees, a decrease of 21.5 percent.

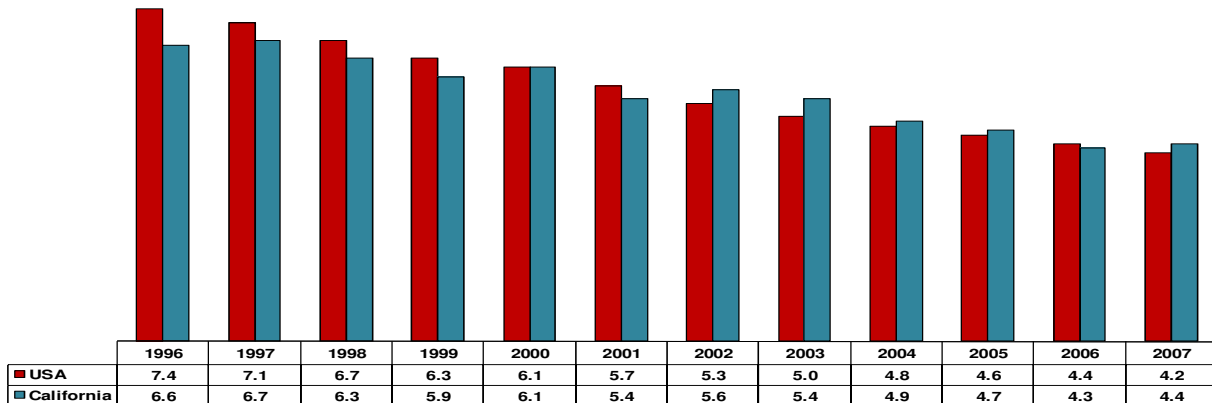


## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### United States and California Incidence Rates: A Comparison

Both the United States and California have experienced a decrease in occupational injury and illness incidence rates from 1996 through 2007. During that time, the United States incidence rate dropped by 43.2 percent, while the California rate declined by 33.3 percent. Since 2002, the incidence rate in California has been mostly above the national average.

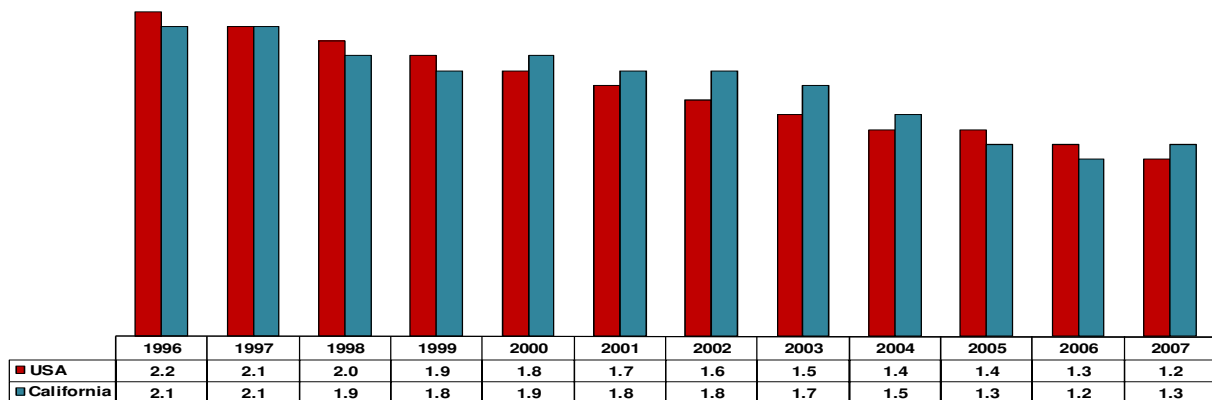
**USA and California  
Injury and Illness Incidence Rate per 100 Full-Time Workers  
Private Industry - Total Recordable Cases**



Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases has also declined in the United States and California from 1996 through 2007. During that period of time, the rate for the United States decreased by 45.5 percent, while the rate dropped for California by 38 percent.

**USA and California  
Injury and Illness Incidence Rate per 100 Full-Time Workers  
Private Industry - Cases with Days Away from Work**



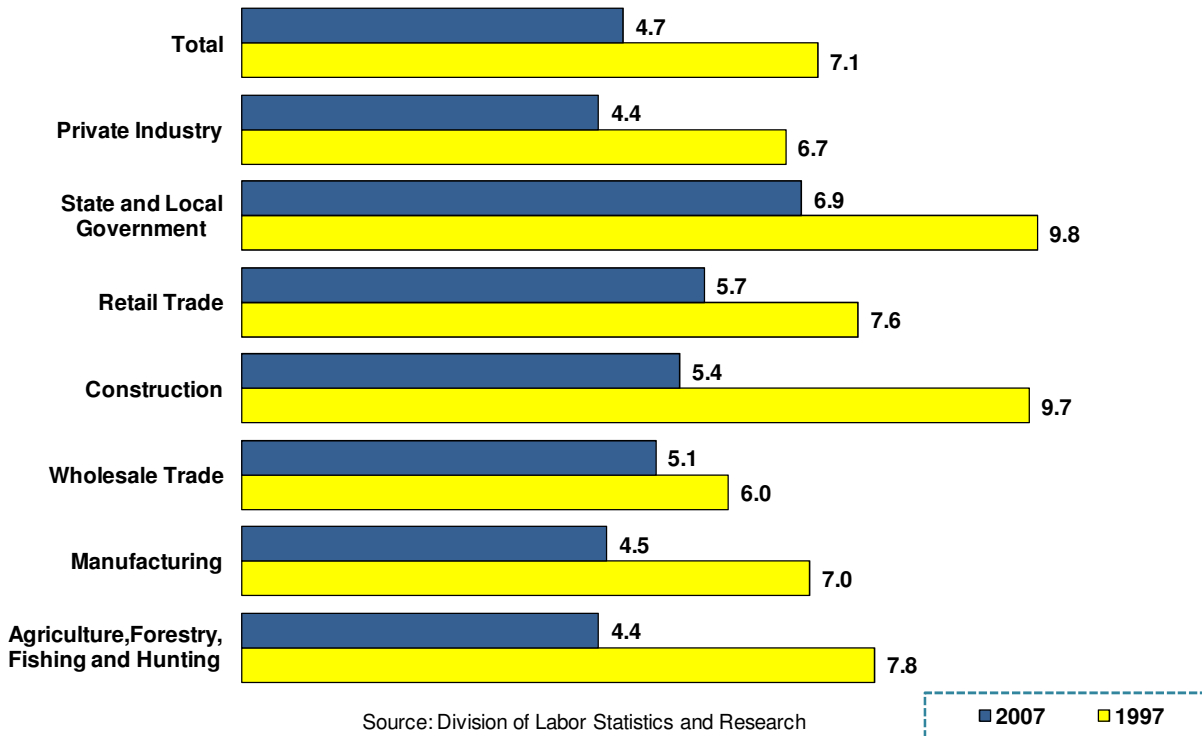
Source: US Department of Labor, Bureau of Labor Statistics

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Characteristics of California Occupational Injuries and Illnesses

This section compares incidence rates by industry in 1997 with those in 2007. Not only have the overall California occupational injury and illness incidence rates declined, but the incidence rates in major industries have also declined. The following charts compare incidence rates for total recordable cases in 1997 and 2007 by type of major industry including state and local government.

**Injury Rates by Industry 2007 vs 1997**



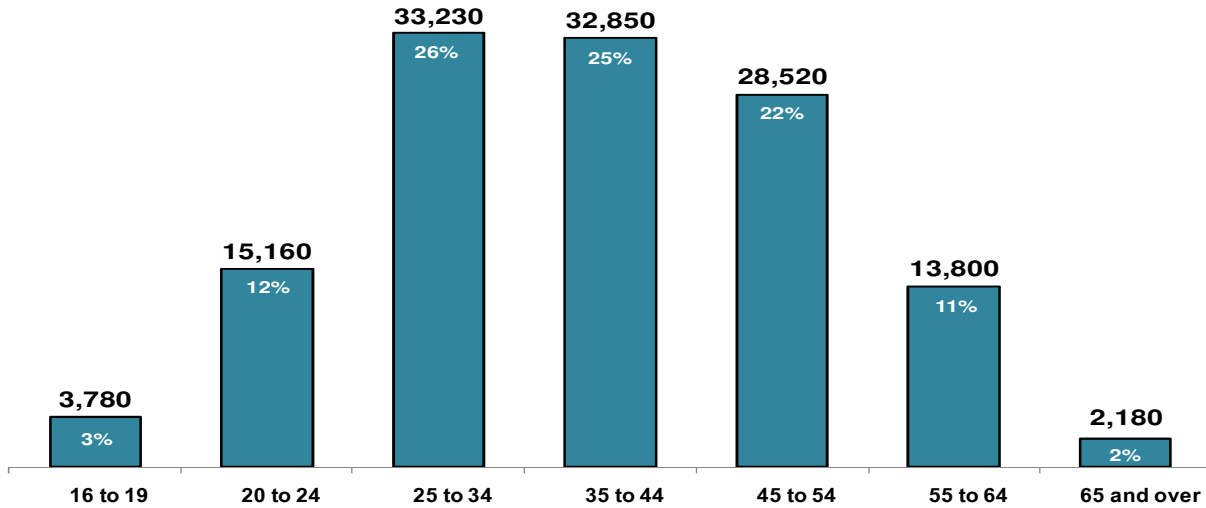
The smallest decline during this period in incidence rates was in the wholesale trade industry, and the largest decrease was in construction.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Characteristics of California Non-Fatal Occupational Injuries and Illnesses

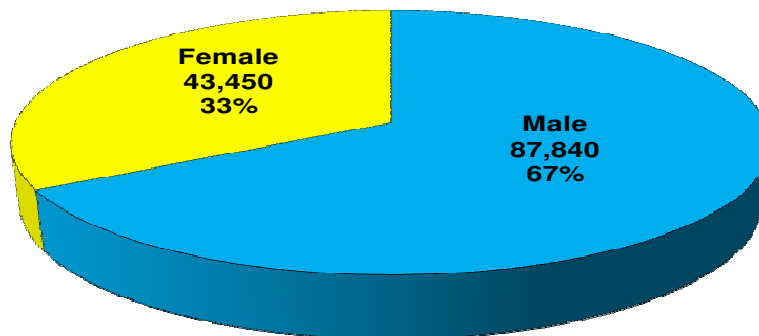
The following charts illustrate various characteristics of non-fatal occupational injuries and illnesses in 2006 in California's private industry.

**California Non-Fatal Occupational Injuries and Illnesses  
by Age of Workers - 2006**



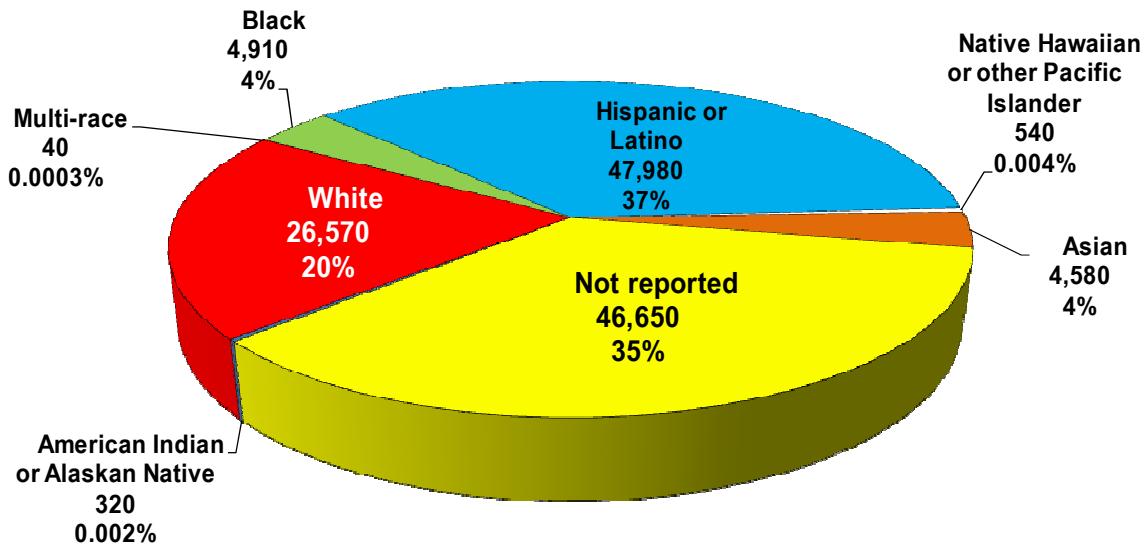
Data Source: DLSR

**California Non-Fatal Occupational Injuries and  
Illnesses by Gender - 2006**



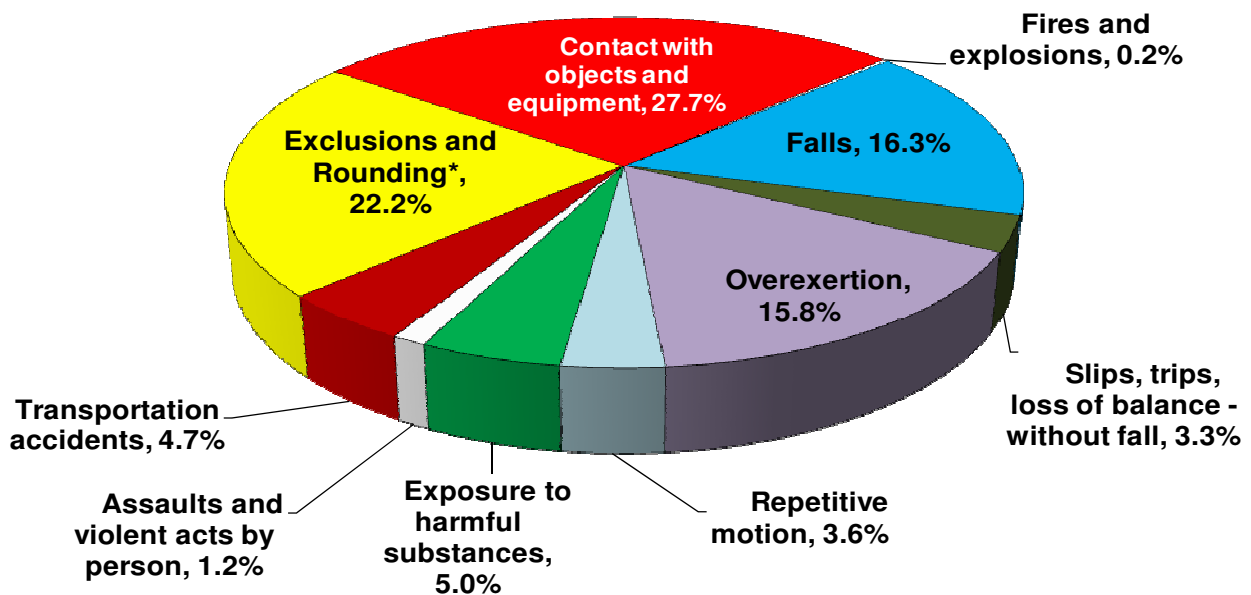
Data Source: DLSR

**California Non-Fatal Occupational Injuries and Illnesses  
by Race or Ethnic Origin (Private) - 2006**  
Total=131,590



Data Source: DLSR

**California Non-Fatal Occupational Injuries and Illnesses by Event and  
Exposure (Private) - 2006**



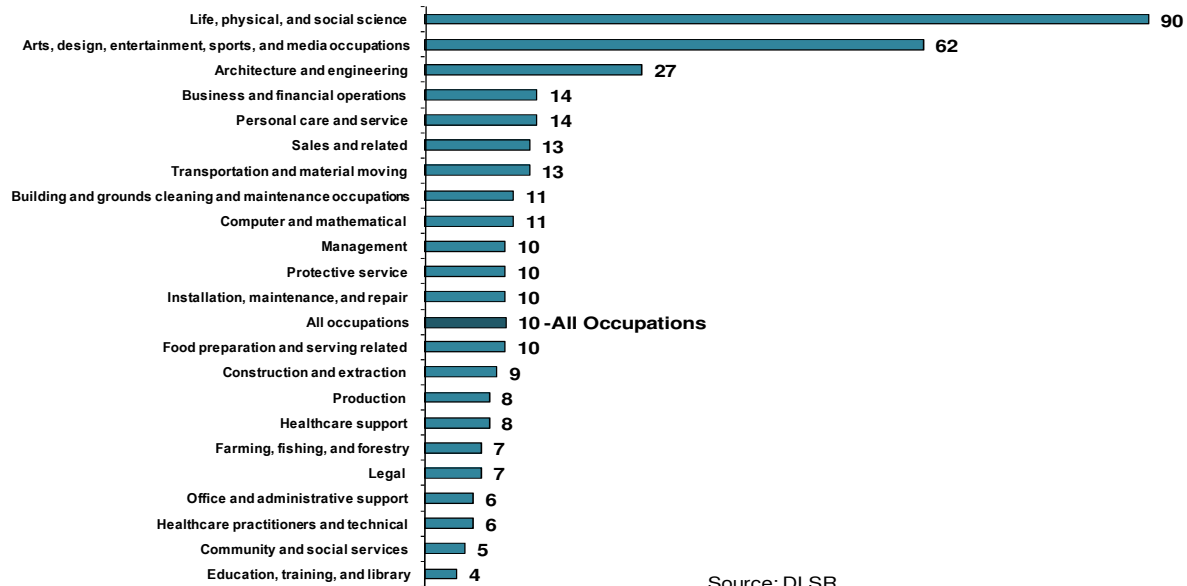
\* Rounding and data exclusion of non-classifiable responses

Data Source: DLSR

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The following charts compare the median days away from work for private industry occupations, state government occupations, and local government occupations. Life, physical, and social science occupations have the greatest median days away from work in private industry and local government, but not in state government.<sup>19</sup>

**Private Industry Occupational Groups**  
**Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2006**



**State Government Occupational Groups**  
**Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2006**



<sup>19</sup> Recent data on median days away from work were available only for 2006.



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

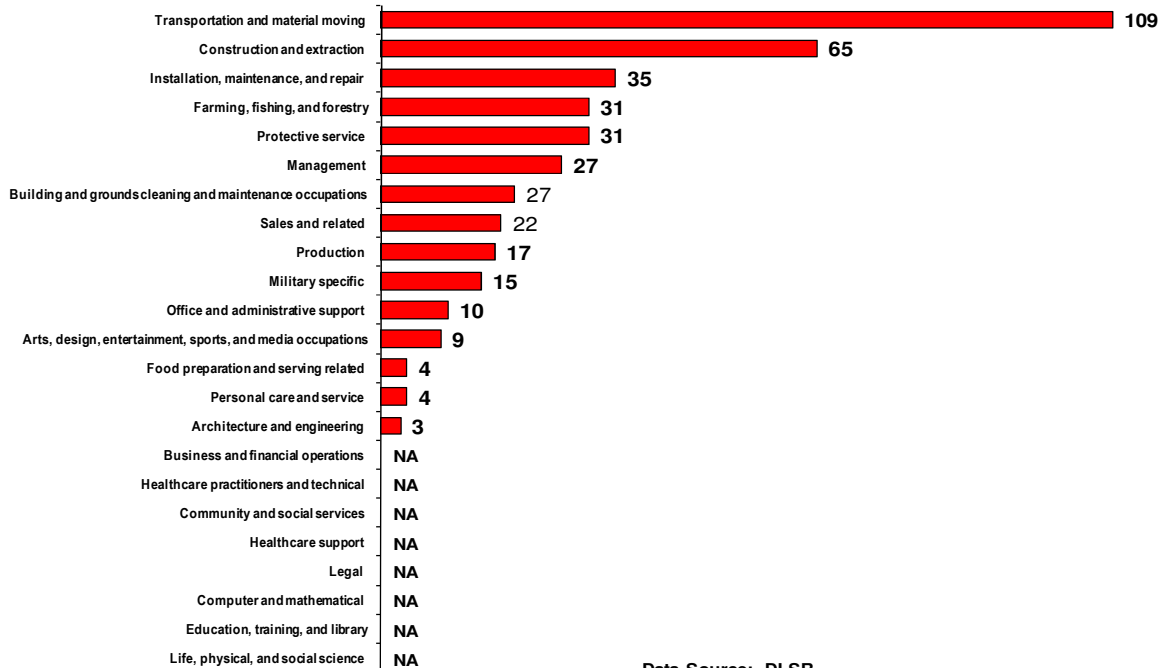
### Local Government Occupational Groups Non-Fatal Occupational Injuries and Illnesses Median Days Away from Work - 2006



Source: DLSR

The following chart compares the number of fatalities for various occupations. The transportation and material moving occupation had the greatest number of fatalities in 2007, followed by the construction and extraction occupation.

### Fatal Occupational Injuries by Selected Occupations All Ownerships, 2007



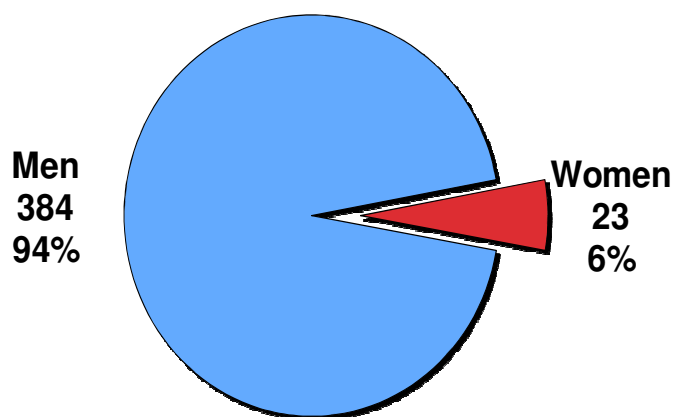
Data Source: DLSR

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Characteristics of California Fatal Occupational Injuries and Illnesses

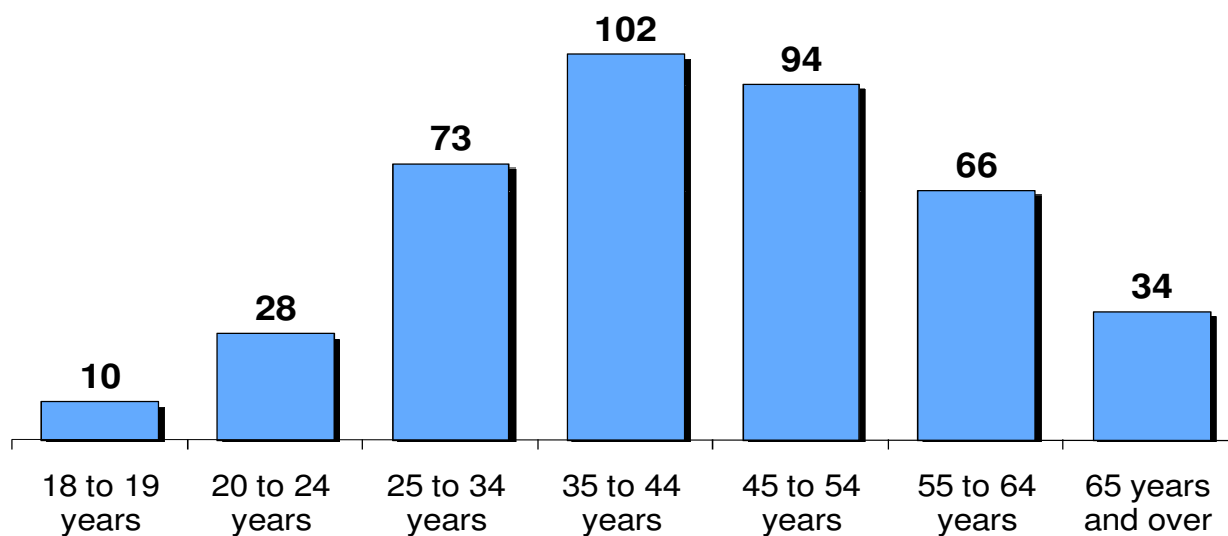
The following charts illustrate various characteristics of fatal occupational injuries and illnesses in California's private industry and federal, state and local governments.

**California Fatal Occupational Injuries and Illnesses  
by Gender - 2007**



Source: BLS

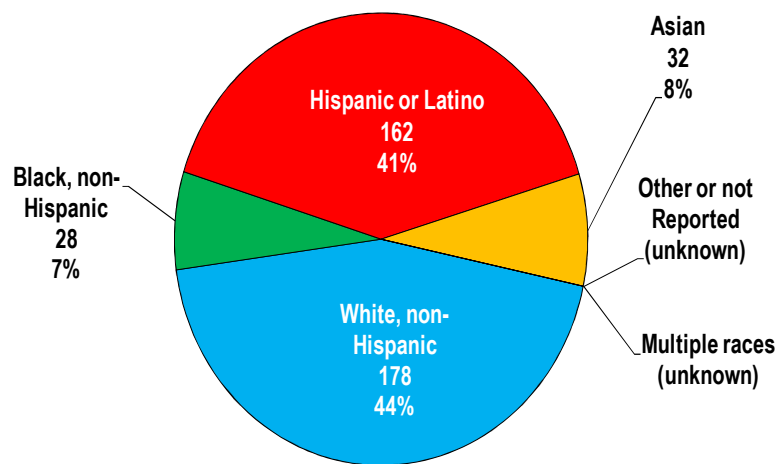
**California Fatal Occupational Injuries and Illnesses  
by Age of Worker - 2007**



Source: BLS

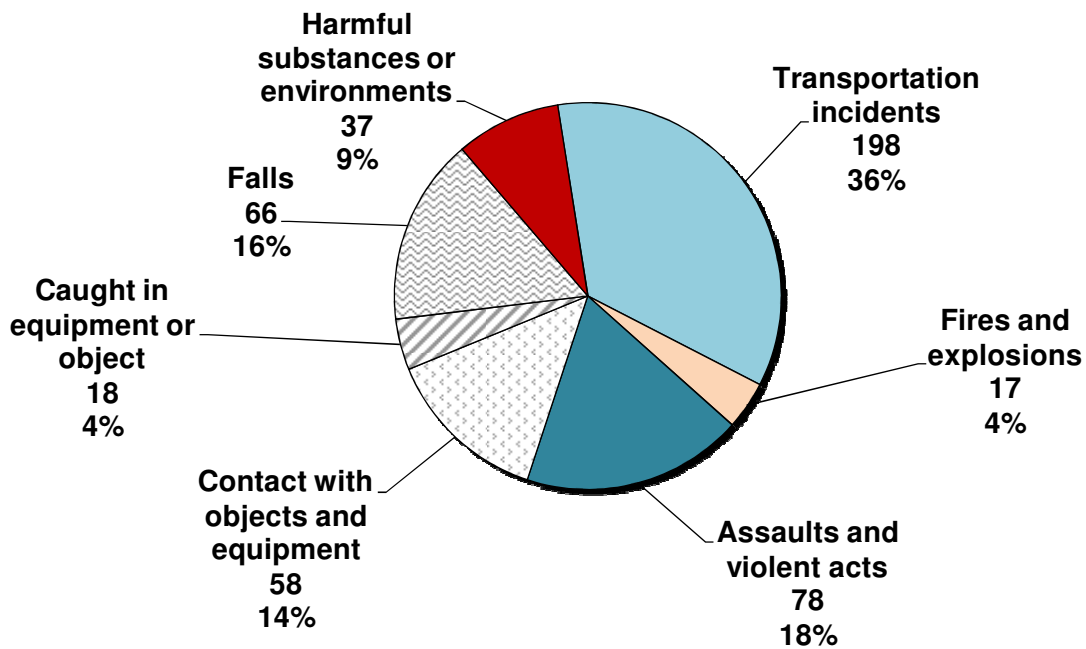
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**California Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin - 2007**



Data Source: BLS

**California Fatal Occupational Injuries and Illnesses by Event or Exposure - 2007**



Source: BLS

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Profile of Occupational Injury and Illness Statistics: California and the Nation

Data for the following analyses, except where noted, were derived from the Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR), from the United States Department of Labor (DOL) Bureau of Labor Statistics (BLS), and from the California Workers' Compensation Institute (CWCII).<sup>20</sup>

#### *Incidence Rates*

- California's most recent work injury and illness statistics for 2007 indicate a non-fatal injury and illness rate of 4.4 cases per 100 full-time employees in the private sector in 2007. This is a 53 percent decline from the 1990 peak level of 9.4 and an estimated 2 percent increase from the previous year's figures.
- The trend in California mirrors a national trend. DOL figures for private employers show that from 1990 to 2007, the work injury and illness rate across the United States fell from 8.8 to 4.2 cases per 100 employees in the private sector. The reduction in the number of incidences of job injuries is likely due to various factors including a greater emphasis on job safety, the improving economy since the early 1990s, and the shift from manufacturing toward service jobs.
- Although the national fatality rate has remained the same between 2005 and 2006, California's fatality rate has increased by 15 percent during the same period, increasing from 2.7 to 3.1 cases per 100,000 employed.
- From the Western region states, Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington, California and Arizona's 2007 private industry rate of 4.4 for non-fatal occupational injuries and illnesses is the lowest.<sup>21</sup> The state that had the second-lowest incidence rate was Hawaii (4.6).

#### *Duration*

- Days-away-from-work cases, including those that result in days away from work with or without a job transfer or restriction, dropped from 2.1 to 1.3 cases per 100 full-time employees from 1996 to 2007 in the private sector. This also mirrors the national trend with the number of days-away-from-work cases falling from 2.1 to 1.2 cases in the national private sector.
- In the "State Report Cards for Workers' Compensation," published by the Work Loss Data Institute, the Institute reported that the median days away from work in California is 11 days, compared with the national average of 7 days.<sup>22</sup>

#### *Industry Data*

- In 2007, injury and illness incidence rates varied greatly between private industries ranging from 1.9 injuries/illnesses per 100 full-time workers in the financial activities sector to 7.7 in transportation and warehousing. California's private industry rates for total cases were higher than the national rates in every major industry division, except for manufacturing (5.6 and 4.5), education and health services (5.2 and 5.0), and construction where both had an incidence rate of 5.4.
- The private industry total case rate for non-fatal injuries increased between 2006 and 2007 from 4.3 to 4.4, and the rate for the public sector (state and local government) decreased from 7.3 in 2006 to 6.9 in 2007.
- Of all the industries identified, the largest decline in injury and illness occurred in other building finishing contractors, from 8.8 per 100 full-time worker injuries in 2006 to 4.4 per 100 full-time worker injuries in 2007. Injury and illness in the general construction industry declined from 6.0 in

<sup>20</sup> Please note that specific case and demographic data for non-fatal occupational injuries and illnesses were only available for 2006.

<sup>21</sup> The comparisons of industry rates have not been adjusted for industry mix within each state.

<sup>22</sup> [http://www.odg-disability.com/pr\\_repsrc.htm](http://www.odg-disability.com/pr_repsrc.htm)

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

2006 to 5.4 per 100 full-time workers in 2007; in various construction specialties, such as glass and glazing contractors, they dropped from 9.5 to 4.9 in 2007. Masonry contractors also achieved a major reduction, from 6.0 worker injuries and illnesses per 100 in 2006 to 4.3 in 2007.

- According to DLSR, the largest decrease in injury and illness by major industry category was in real estate, rental and leasing, from 4.0 to 2.4 per 100 full-time worker injuries in 2006 and 2007 respectively, followed by mining, from 3.6 to 2.3 per 100 full-time worker injuries in 2006 and 2007, and utilities, from 5.4 to 4.1 per 100 full-time worker injuries in 2006 and 2007.<sup>23</sup>
- According to DLSR, the largest increase in injury and illness by industry sectors was in professional, scientific, and technical services, from 1.2 to 2.3 per 100 full-time worker injuries in 2006 and 2007 respectively, followed by accommodation and food services with an increase from 4.0 to 4.9 per 100 full-time worker injuries in 2006 and 2007.<sup>24</sup>
- Over the past decade (1997-2007), the number of fatal injuries declined by 36.4 percent, from 610 to 388. From 2006 to 2007, the number of fatal injuries decreased by about 24 percent. The highest number of fatal injuries was in trade, transportation and utilities (100), followed by construction (71).
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in 2006 are: laborers and freight, stock, and material movers; truck drivers, heavy and tractor-trailer; janitors and cleaners, except maids and housekeeping cleaners; construction laborers; retail sales persons; carpenters; truck drivers, light or delivery services; farm workers and laborers, crop, nursery, and greenhouse; stock clerks and order fillers; nursing aides, orderlies, and attendants.
- In California state government, the top ten occupations with the most non-fatal injuries and illnesses in 2006 are: correctional officers and jailers; psychiatric technicians; registered nurses; janitors and cleaners, except maids and housekeeping cleaners; office clerks, general; police and sheriff's patrol officers; nursing aids, orderlies, and attendants; physical therapists; compliance officers, except agriculture, construction, health and safety, and transportation; security guards.
- In the local government, the top ten occupations with the most non-fatal injuries and illnesses in 2006 are: police and sheriff's patrol officers; janitors and cleaners except maids and house-keeping cleaners; teacher assistants; maintenance and repair workers, general; bus drivers, school; bus drivers, transit and inter-city; office clerks, general; fire fighters; security guards; nursing aids, orderlies, and attendants.
- Transportation and material-moving occupations (109) and construction and extraction (65) accounted for 43.7 percent of the fatal injuries in 2007. Installation, maintenance, and repair (35), farming, fishing, and forestry (31), protective service (31), management (27), building and grounds cleaning and maintenance (27), sales and related (22) were the other occupations with the most number of fatal injuries in 2007. Transportation and material-moving incidents were the number one cause of fatal injuries accounting for about 27.4 percent of fatal injuries in 2007.
- Assaults and violent acts accounted for about 18 percent of fatal injuries in 2007 and are a major cause of fatalities among: protective-service occupations; sales and related occupations; and transportation and material moving occupations.

### ***Establishment Size and Type***

- The lowest rate for the total recordable non-fatal cases in 2007 was experienced by the smallest employers. Employers with 1 to 10 employees and 11 to 49 employees had incidence rates of 1.6 and 3.9 cases, respectively, per 100 full-time employees. There was no change in incidence rates for employers with 1 to 10 employees from 2006 to 2007. Employers with 11 to 49 employees experienced a 3 percent increase in incidence rates compared to 2006.

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<sup>23</sup> DLSR, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2006, 2007.

<sup>24</sup> DLSR, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2006, 2007.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

- Establishments with 50 to 249 and 250 to 999 employees reported the highest rates of 5.8 and 5.5 cases per 100 full-time employees, respectively, in 2007. Establishments with 1,000 and more employees experienced a 12 percent decrease from 5.8 to 5.1 cases per 100 full-time employees.

### ***Types of Injuries***

- Some types of work injuries have declined since 1997 in the private sector, while others have increased. The number of sprains and strains continued to decline from 1997; however, these injuries remain by far the most common type of work injury accounting for about 37.6 percent of days-away-from-work cases in the private sector. All types of injuries including cuts, lacerations, bruises, contusions, heat burns, carpal tunnel syndrome, tendonitis, chemical burns, amputations, and multiple injuries have decreased from 1997 to 2006, with the biggest decrease, 65 percent, seen both in carpal tunnel syndrome and tendonitis.
- In the private sector, contact with objects and equipment was the leading cause of days-away-from-work injuries, cited in about 27.7 percent of days-away-from-work cases. Overexertion was the second common cause of injury, accounting for about 15.8 percent of injuries.
- In California state government, the two main causes of injury were assaults and violent acts by person and overexertion, accounting for about 15.8 and 14 percent of days-away-from-work cases, respectively, in 2006.
- In local government, the main causes of injury were overexertion and contact with objects and equipment, accounting for 15 and 13.3 percent of days-away-from-work cases, respectively, in 2006.
- The most frequently injured body part is the back, accounting for about 13.3 percent of the cases in state government and about 18.5 percent cases in local government. In the private sector, back injuries account for 21.4 percent of non-fatal cases.

### ***Demographics***

- Over the period from 1997 to 2006 in the California private sector, the number of days-away-from-work cases for women decreased by about 33.4 percent. Days-away-from-work cases for men decreased by 37 percent.
- Between 1997 and 2006, all age groups in private industry (14 to 15, 16 to 19, 20 to 24, 25 to 34, 35 to 44, 45 to 54, 55 to 64, and 65 and over) experienced a decline. The biggest decline (44 percent) occurred among 25 to 34 year-old workers. The age group 35 to 44 experienced a 43.5 percent decline, and the age group of 20 to 24 experienced a 35.7 percent decrease in the numbers of days away from work.
- In 2007, out of 407 fatalities, approximately 94 percent were male and 6 percent were female. All age group categories (18 to 19, 20 to 24, 25 to 34, 35 to 44 years, 45 to 54 years, 55 to 64 years, and 65 and over) experienced a decrease in fatal injuries between 2006 and 2007. The biggest decrease in the number of fatalities (39 percent) was seen in the 20 to 24 year age group from 46 to 28 cases, followed by a 29 percent decrease in the age group 25 to 34 (from 103 to 73 cases) in the period of time from 2006 to 2007.
- The highest number of fatalities in 2007 by race or ethnic origin categories was experienced by "White, non-Hispanic" closely followed by "Hispanic or Latino," accounting for 44 percent and 40 percent of the fatalities, respectively. From 2006 to 2007, the biggest decrease (30 percent) for fatal injuries was in the "Hispanic or Latino" group, followed by the "White, non-Hispanic" group (25.5 percent). There was a 21.7 percent increase for "Black or African American, non-Hispanic" group (from 23 to 28) and a 0.03 percent increase for "Asian" group (from 31 to 32) for the same period of time.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### ***Occupational Injury and Illness Reporting***

Occupational injury and illness information is the responsibility of BLS within the United States and DOL and DLSR within the California DIR. Occupational injuries and illnesses are recorded and reported by California employers through several national surveys administered by DOL with the assistance of DIR.

#### *OSHA Reporting and Recording Requirements*

The United States Occupational Safety and Health Act (OSH Act) of 1970 requires covered employers to prepare and maintain records of occupational injuries and illnesses. It provides specific recording and reporting requirements that comprise the framework for the nationwide occupational safety and health recording system. The Occupational Safety and Health Administration (OSHA) in DOL administers the OSH Act recordkeeping system.

Although there are exemptions for some employers from keeping Cal/OSHA injury and illness records, all California employers must report injuries to DLSR. Every employer must also report any serious occupational injuries, illnesses or deaths to California OSHA within DIR.

The data assist employers, employees and compliance officers in analyzing the safety and health environment at the employer's establishment and are the source of information for the BLS "Annual Survey of Occupational Injuries and Illnesses" and the OSHA "Occupational Injury and Illness Survey."

#### *BLS Annual Survey of Occupational Injuries and Illnesses*

To estimate the number of occupational injuries and illnesses in the United States, BLS established a nationwide annual survey of employers' occupational injuries and illnesses. The state-level statistics on non-fatal and fatal occupational injuries and illnesses are derived from this survey.

#### *Non-Fatal Injuries and Illnesses*

The BLS Annual Survey develops frequency counts and incidence rates by industry and also profiles worker and case characteristics of non-fatal workplace injuries and illnesses that result in lost work time. Each year, BLS collects employer reports from about 173,800 randomly selected private industry establishments.

#### *Fatal Injuries and Illnesses*

The estimates of fatal injuries are compiled through the Census of Fatal Occupational Injuries (CFOI), which is part of the BLS occupational safety and health statistics program. CFOI uses diverse state and federal data sources to identify, verify and profile fatal work injuries.

#### *OSHA Occupational Injury and Illness Survey*

Federal OSHA administers the annual "Occupational Injury and Illness Survey." OSHA utilizes this collection of employer-specific injury and illness data to improve its ability to identify and target agency interventions to those employers who have serious workplace problems. For this survey, OSHA collects data from 80,000 non-construction establishments and from up to 15,000 construction establishments.

### **Occupational Injury and Illness Prevention Efforts**

Efforts to prevent occupational injury and illness in California take many forms, but all are derived from cooperative efforts between the public and private sectors. This section describes consultation and compliance programs, health and safety standards, and education and outreach designed to prevent injuries and illnesses to improve worker health and safety.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *Cal/OSHA Program*

The Cal/OSHA Program is responsible for enforcing California laws and regulations pertaining to workplace health and safety and for providing assistance to employers and workers about workplace safety and health issues.

The Cal/OSHA Enforcement Unit conducts inspections of California workplaces based on worker complaints, accident reports and high hazard industries. There are 22 Cal/OSHA Enforcement Unit district offices located throughout the State of California. Specialized enforcement units, such as the Mining and Tunneling Unit and the High Hazard Enforcement Unit, augment the efforts of district offices in protecting California workers from workplace hazards in high hazard industries.

Other specialized units, such as the Crane Certifier Accreditation Unit, the Asbestos Contractors' Registration Unit, the Asbestos Consultant and Site Surveillance Technician Unit and the Asbestos Trainers Approval Unit, are responsible for enforcing regulations pertaining to crane safety and prevention of asbestos exposure.

The Cal/OSHA Consultation Service provides assistance to employers and workers about workplace safety and health issues through on-site assistance, high hazard consultation and other special emphasis programs. The Consultation Service also develops educational materials on workplace safety and health topics.

### **Profile of Division of Occupational Safety and Health (DOSH) On-Site Inspections and Violations Cited**

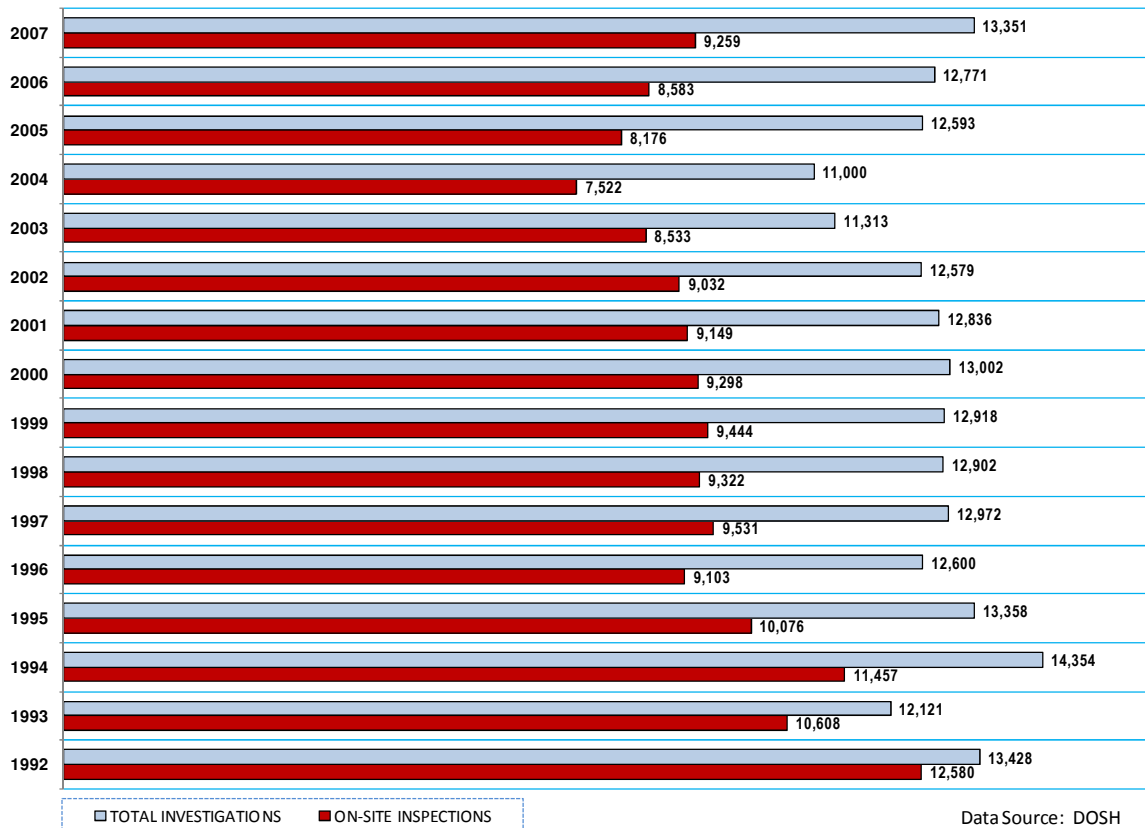
The trends in types of inspections have varied in the past few years, with Accidents and Complaints being consistently predominant. However, starting in fiscal year (FY) 2006, Programmed Inspections started to reach higher levels compared to Accidents and Complaints.



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The chart below shows the total numbers of investigations and on-site inspections for the period from calendar year (CY) 1992 through 2007.<sup>25</sup> From CY 1992 to 1995, the total number of investigations averaged 13,315 per year with an average of 11,180 on-site inspections. During the next seven years, from 1996 to 2002, the average number of investigations decreased to 12,830, and the average number of on-site inspections decreased to 9,268. During the next two years (2003 and 2004), there was further decrease in both the average number of investigations (to 11,157) and average number of on-site inspections (to 8,028). From 2004 to 2007, there was a 21.4 percent increase in investigations and 23 percent increase in the number of on-site inspections.

**DOSH Total Investigations and On-Site Inspections**

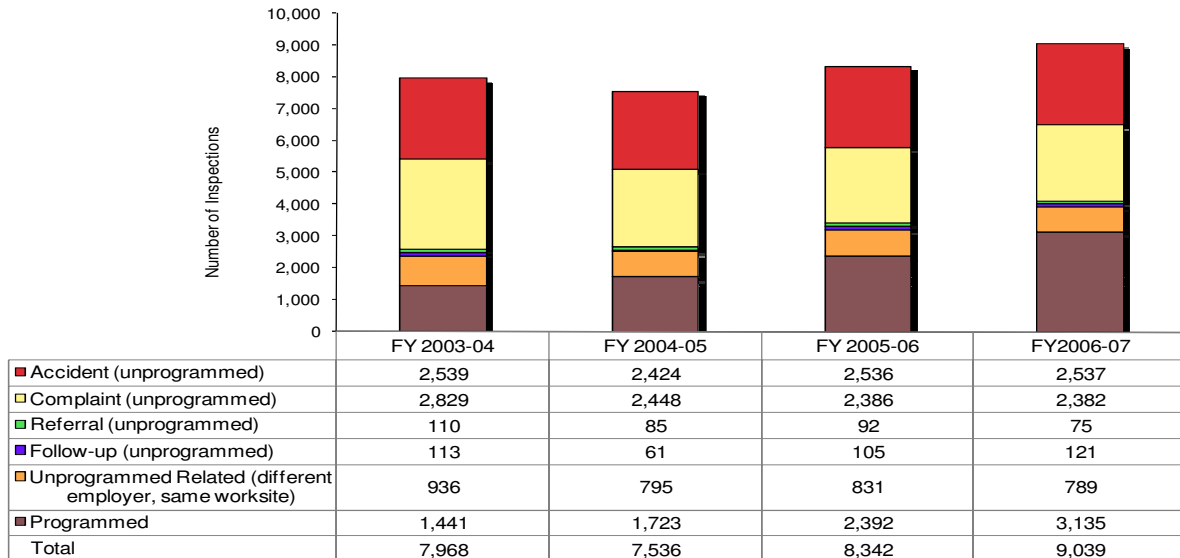


<sup>25</sup> The numbers of investigations, on-site inspections, and violations for calendar years could differ from the fiscal year numbers provided later in this section.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The chart below shows that the total Inspections have fluctuated in the past three years from 7,968 in FY 2004 to 9,039 in FY 2007.

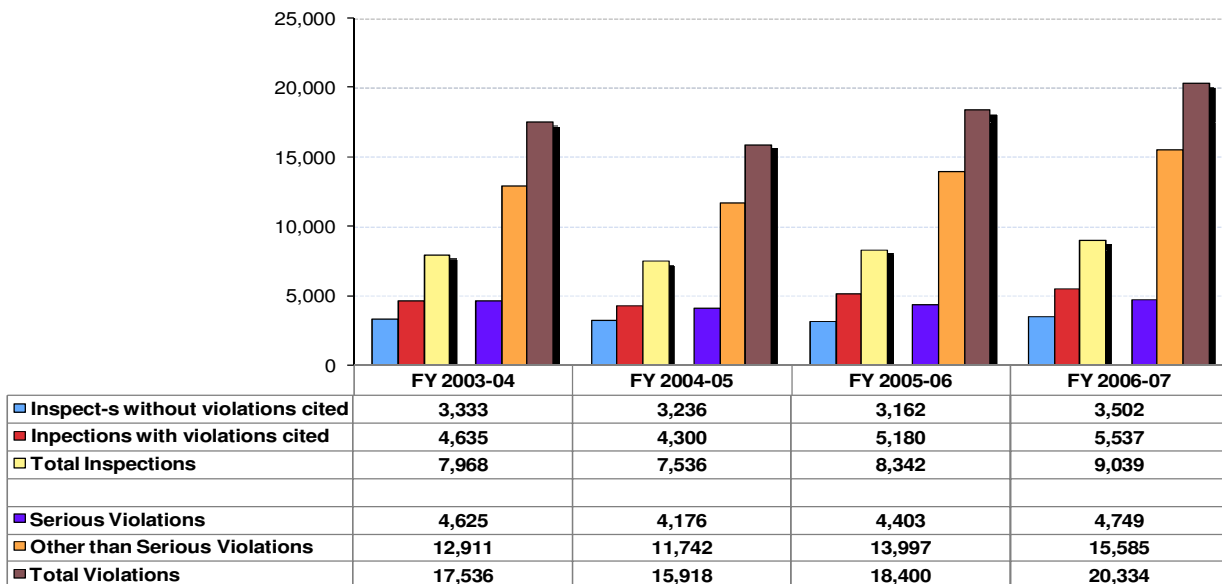
**DOSH Inspections by Type FY 2003-04 to FY 2006-07**



Source: DIR Division of Occupational Safety and Health

The number of violations is greater than inspections due to the fact that most inspections where violations occur yield more than one violation. Violations are further broken down into serious and other-than-serious. In FY 2007, 61.30 percent of inspections resulted in violations cited. The breakdown by type is shown in the chart below.

**DOSH Inspections and Violations Cited FY 2003-04 to FY 2006-07**

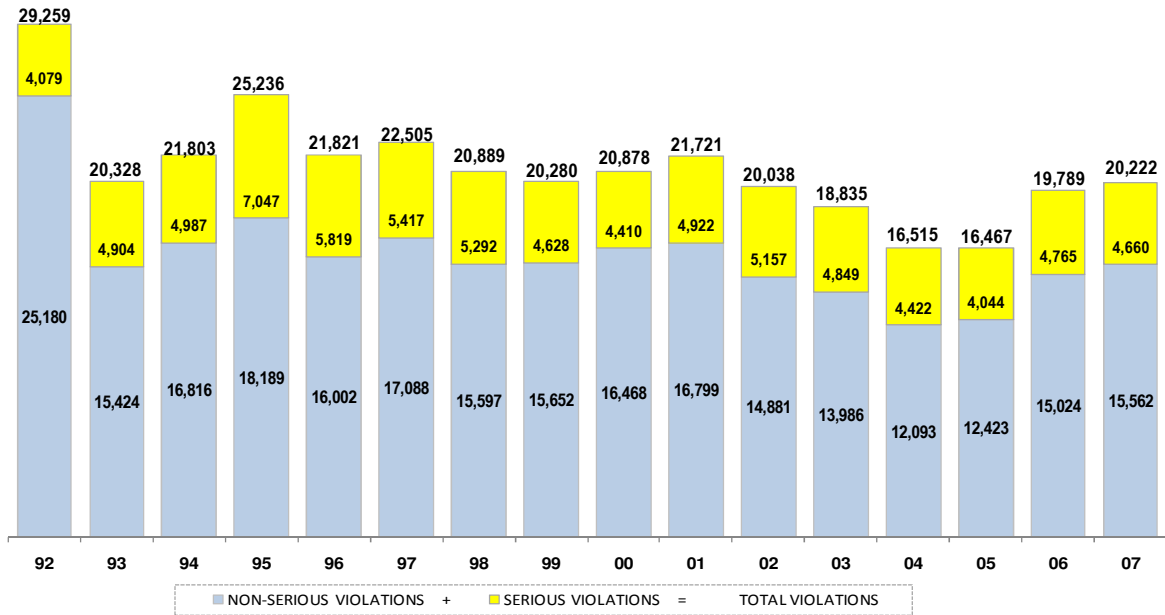


Source: DIR Division of Occupational Safety and Health

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The following chart shows the total numbers of violations, including the number of serious DOSH violations from CY 1992 to the end of the first quarter of 2008. The total number of violations decreased by 30.5 percent from 1992 to 1993 and increased by 24 percent from 1993 to 1995. After decreasing by 13.5 percent from 1995 to 1996, the total number of DOSH violations averaged 21,350 per year from 1996 to 2001. From 2001 to 2005, there was a 24 percent decrease in the total number of DOSH violations, and from 2005 to 2007, the total number of violations again increased by 23 percent.

**DOSH Violations  
1992 - 2007**



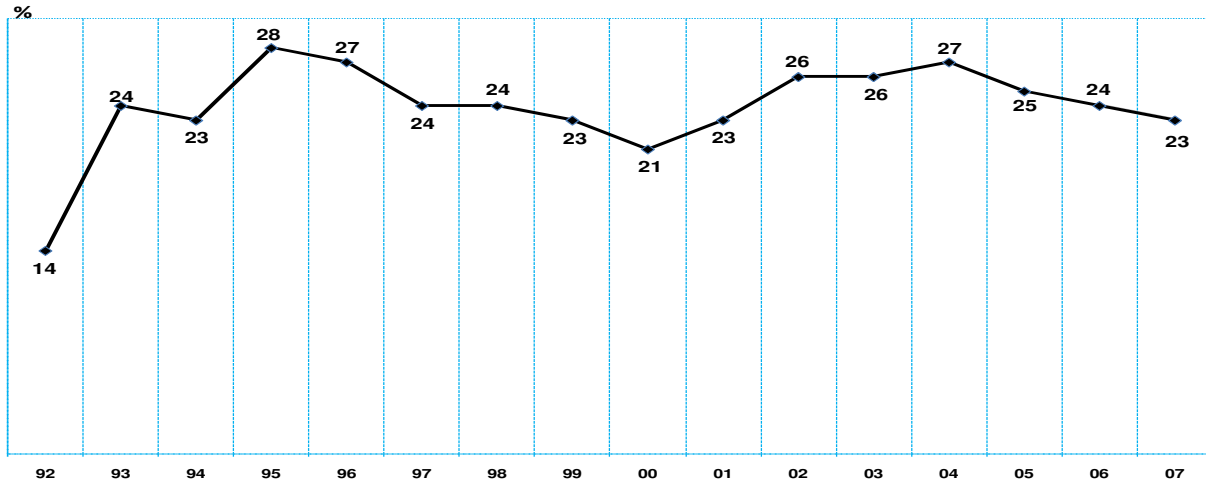
Data Source: DOSH

As the chart above shows, the number of serious violations increased by 73 percent from 1992 to 1995. From 1995 to 2000, the number of serious violations decreased by 37.4 percent, increased by 17 percent from 2000 to 2002, and then again decreased by 21.6 percent from 2002 to 2005. After increasing by 18 percent from 2005 to 2006, the number of serious DOSH violations averaged 4,712 per year in 2006 and 2007.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The chart below shows the trend in the share of serious DOSH violations in the total number of all violations from 1992 to the end of the first quarter of 2008. The share of serious DOSH violations increased from 14 percent in 1992 to its peak of 28 percent of total violations in 1995, and decreased to 21 percent in 2000. From 2000 to 2004, the share of serious violations increased to 27 percent of total DOSH violations and then decreased to 23 percent from 2004 to 2007.

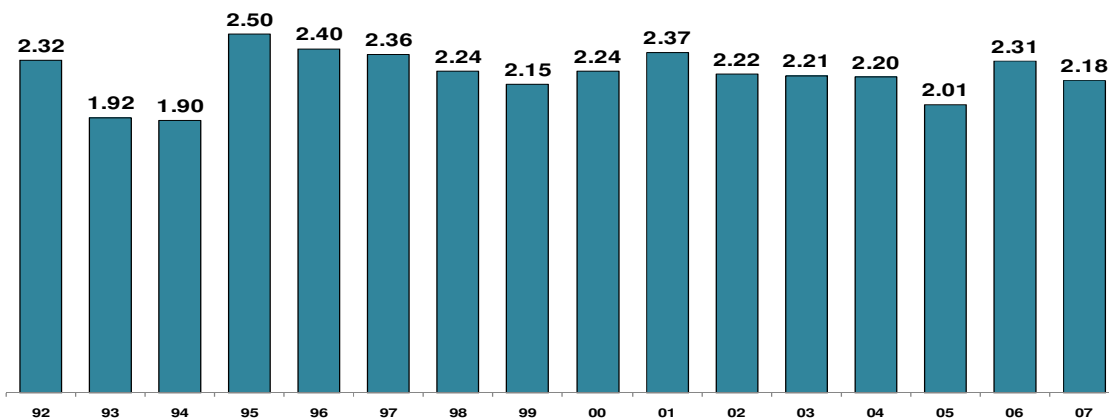
**Percent of Serious Violations in Total DOSH Violations  
1992 - 2007**



Data Source: DOSH

The average number of DOSH violations per inspection decreased by 17 percent from 1992 to 1993 and averaged 1.91 in 1993 and 1994. The increase of 31.6 percent in average number of violations per inspection from 1994 to 1995 followed with 14 percent decrease from 1995 to 1999. During the next six years, from 1999 to 2004, the average number of violations per inspection averaged 2.2 and then decreased by 8.6 percent from 2004 to 2005. After an increase of 15 percent from 2005 to 2006, the average number of violations per inspection decreased again by about 6 percent from 2006 to 2007.

**Average Number of DOSH Violations per Inspection  
1992 - 2007**



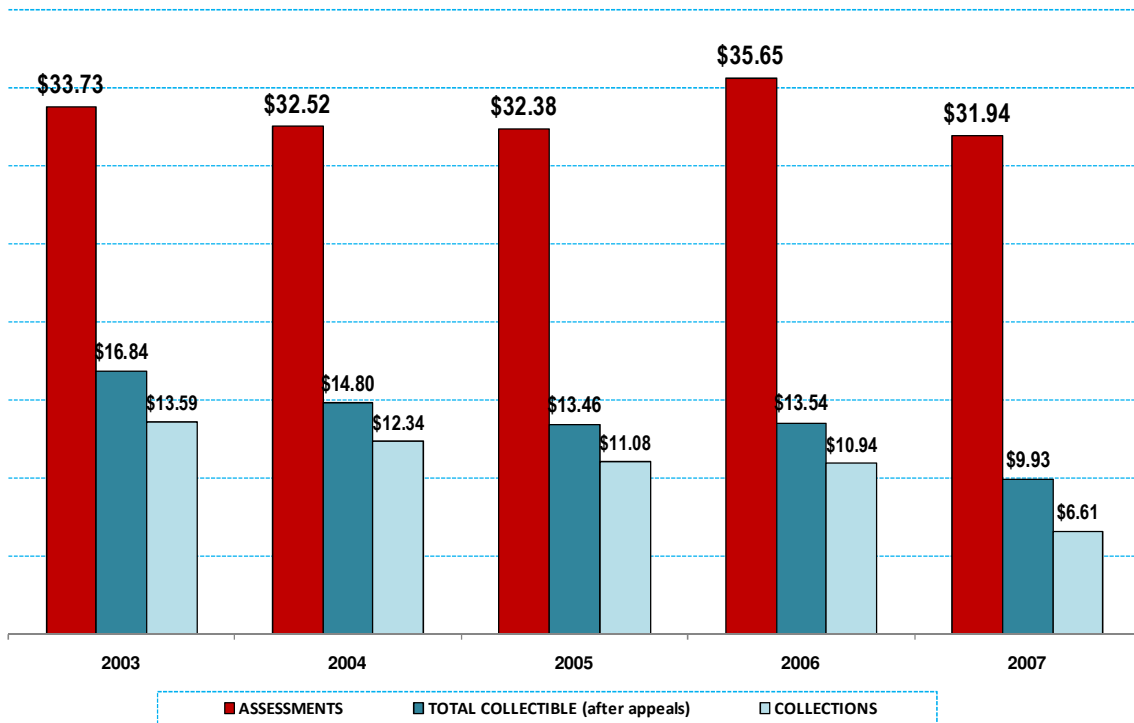
Data Source: DOSH

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The chart below demonstrates the trends in penalties and collections. Total Penalties Assessed were \$31.94 million in FY 2007 and represent 5,537 employers found to be out of compliance with one or more health and safety laws. Many employers appeal those “recommended” penalties at the Cal/OSHA Appeals Board, and they may be ordered to pay in full, pay a reduced amount, or have the penalties eliminated due to procedural issues. Because of the appeals process, Penalties Collected will almost always be less than the initial recommended Penalties Assessed. Total Collections were \$6.61 million in FY 2007.

Although the chart below demonstrates the trends in penalties and collections, it cannot be viewed entirely as an indicator of progress in health and safety at places of employment, due to related impacts on the data from DOSH staffing changes and resource changes from year to year, as well as activities at the Appeals Board. Nevertheless, the data do give a sense of the general magnitude and accounting of penalties and collections, as well as provide a starting point for further analysis.

**Total DOSH Penalties Assessed and Collected (Million \$)  
2003-2007**

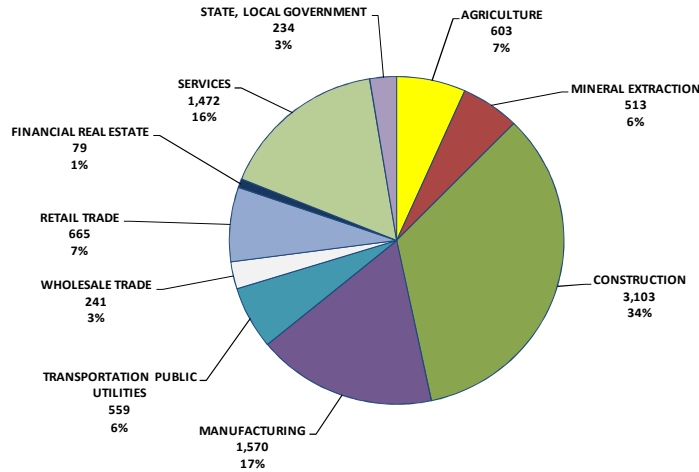


Data Source: DOSH

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The chart below illustrates the proportion of inspections and violations in major industrial groups. Of the 9,039 workplace health and safety inspections conducted in FY 2007, 3,103 (34.3 percent) were in construction and 5,936 (65.7 percent) were in non-construction.

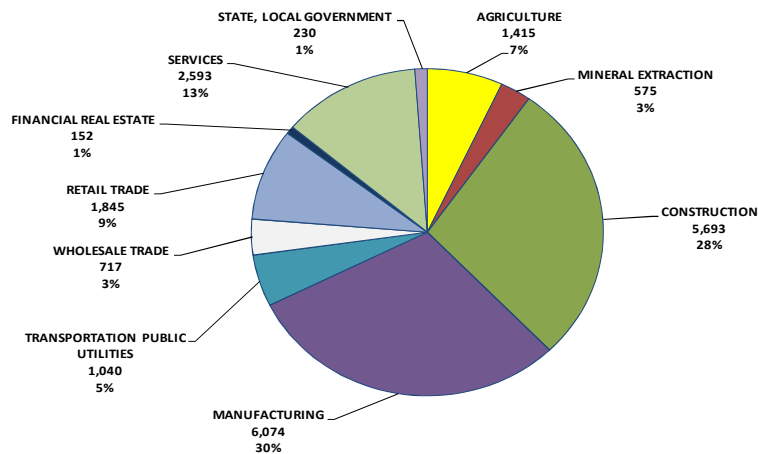
**Distribution of Inspections by Major Industry, FY 2007**  
(Total Inspections=9,039)



Data Source: DOSH

Despite the fact that the greatest percentage of inspections were in construction, the greatest percentage (30) of violations were found to be in manufacturing, as is shown in the chart below.

**Distribution of Violations by Major Industry, FY 2007**  
(Total Violations=20,334)



Data Source: DOSH

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

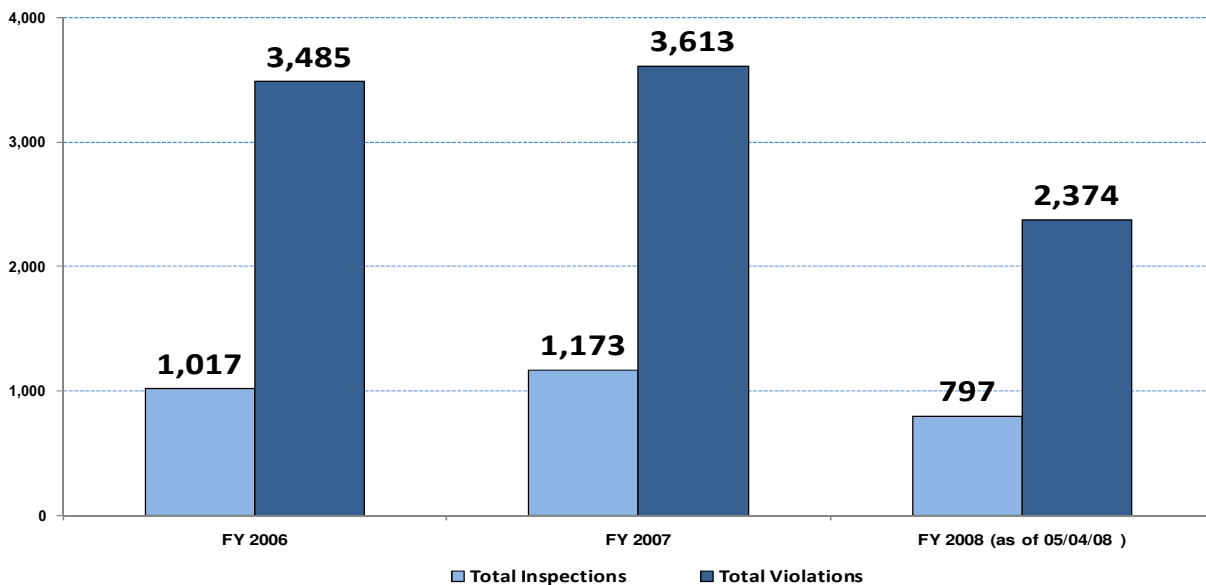
### Economic and Employment Enforcement Coalition<sup>26</sup>

According to the DIR website, “For decades California has had some of the strongest labor and workforce safety laws in the country.” To help enforce these labor laws and regulations, the “Triple E.C.” Coalition, the Economic and Employment Enforcement Coalition (EEEC) was created in 2005 as a multi-agency enforcement program consisting of investigators from the Division of Labor Standards Enforcement (DLSE), DOSH, Employment Development Department (EDD), Contractors State License Board and U.S. DOL. The primary emphasis of EEEC is to combine enforcement efforts. EEEC is a partnership of state and federal agencies, each expert in their own field, collaborating to:

- Educate business owners and employees on federal and state labor, employment, and licensing laws.
- Conduct vigorous and targeted enforcement against labor law violators.
- Help level the playing field and restore the competitive advantage to law-abiding businesses and their employees.”<sup>27</sup>

Given the newness of EEEC, there are only two full years of data. The data for FY 2008 are available as of May 4, 2008, and have to be updated for comparisons with previous years. Total EEEC inspections rose from FY 2006 to FY 2007, from 1,017 to 1,173, respectively, and violations increased from 3,485 to 3,613 from FY 2006 to FY 2007. The penalties given were \$2.32 million in FY 2006 and \$2.50 million in FY 2007; however, only \$312,391 (13.5 percent) were collected in FY 2006 and \$336,625 (13.5 percent) in FY 2007. The following two charts illustrate the comparisons.<sup>28</sup>

**Total Number of EEEC Inspections and Violations  
(FY 2006, 2007, 2008)**



Data Source: DOSH

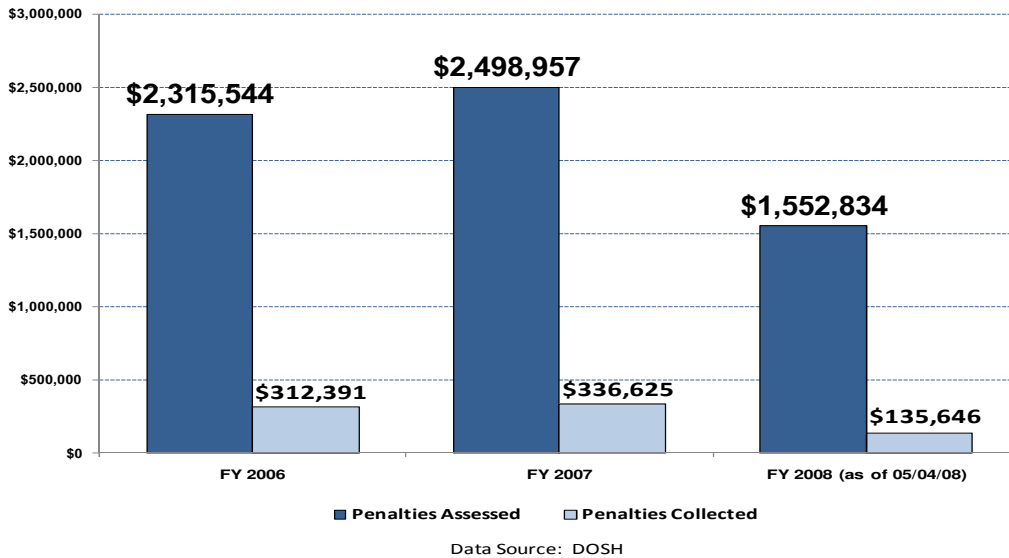
<sup>26</sup> For more information about the EEEC, visit any of these agency links: <http://www.dir.ca.gov/EEEC/EEEC.html>, or <http://www.edd.ca.gov/eddeec.htm>, or <http://www.labor.ca.gov/eeec.htm>

<sup>27</sup> <http://www.dir.ca.gov/EEEC/EEEC.html>

<sup>28</sup> Data provided by DOSH. These totals reflect only DOSH citations and penalties; other types of Labor Code citations and penalties resulting from the enforcement action are independently accounted for by the respected agency or unit.

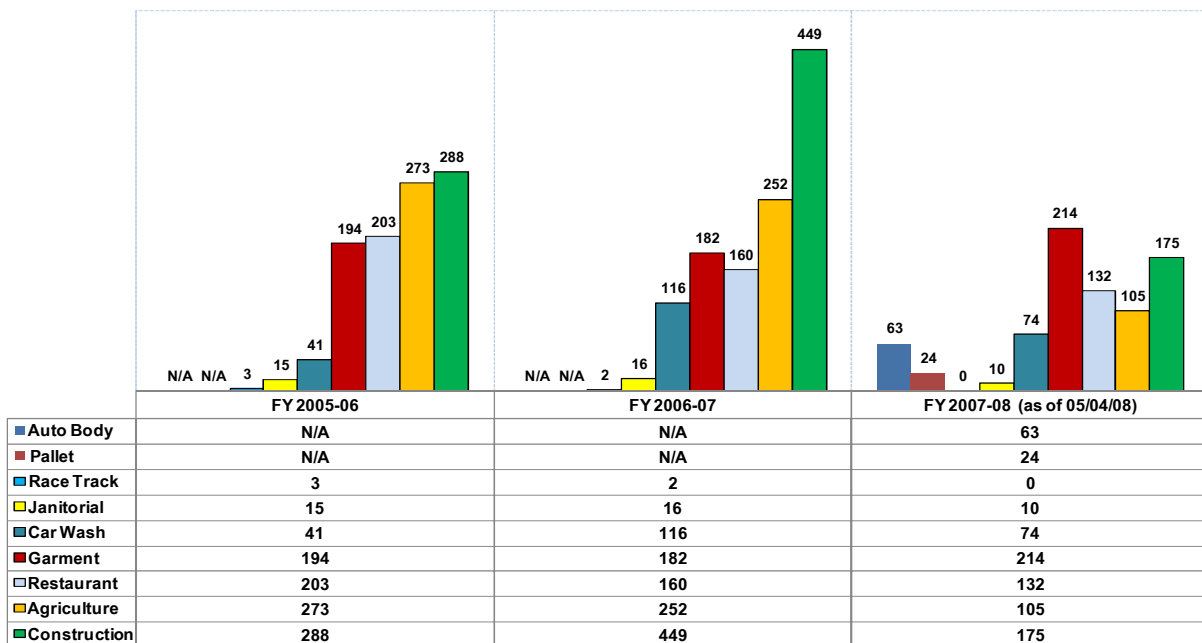
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Total EEEEC Penalties Assessed And Collected (FY 2006, 2007, 2008)



The four charts below describe EEEEC inspections and violations by industry, along with the penalties assessed and collected. Construction and agriculture have led in the number of inspections in FY 2005 – 2006 and FY 2006 - 2007. However, in FY 2007 – 2008, the garment industry had the greatest number of inspections. The garment, construction, and restaurant industries have had the greatest number of violations in the past two years. However, the garment industries' violations increased by 19 percent, while the construction and restaurant industries' violations decreased by 67 and 89 percent, respectively, in the most recent fiscal year. Agriculture and garment industries are leading in penalties assessed for the FY 2007 – 2008.

### EEEC Report: Inspections FY 2005-2006 - FY 2007-2008

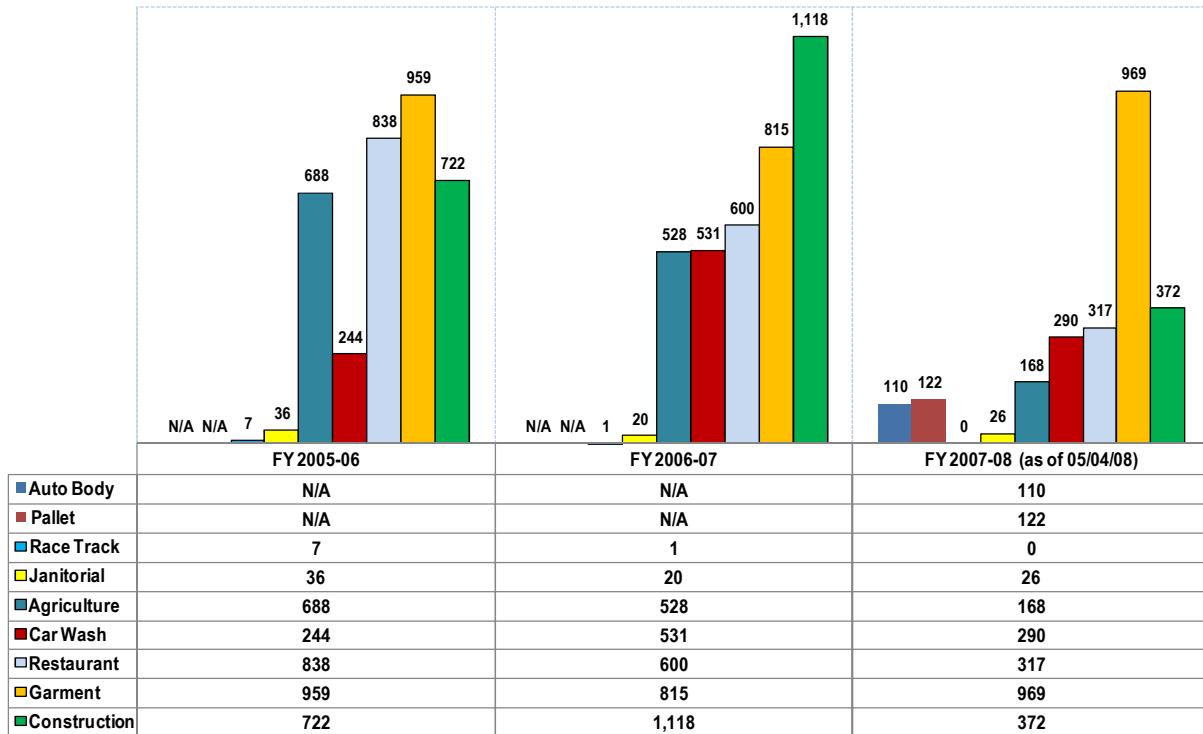


Data Source: DIR - DOSH



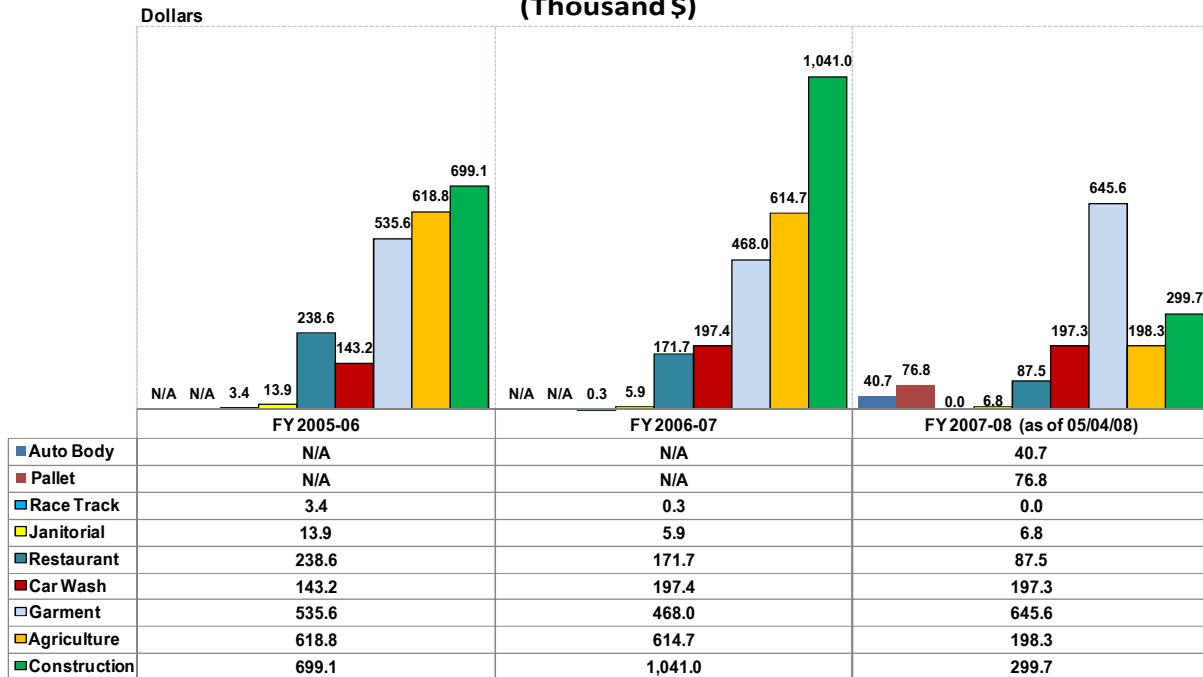
# WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

## EEEC Report: Violations FY 2005-2006 - FY 2007-2008



Data Source: DIR - DOSH

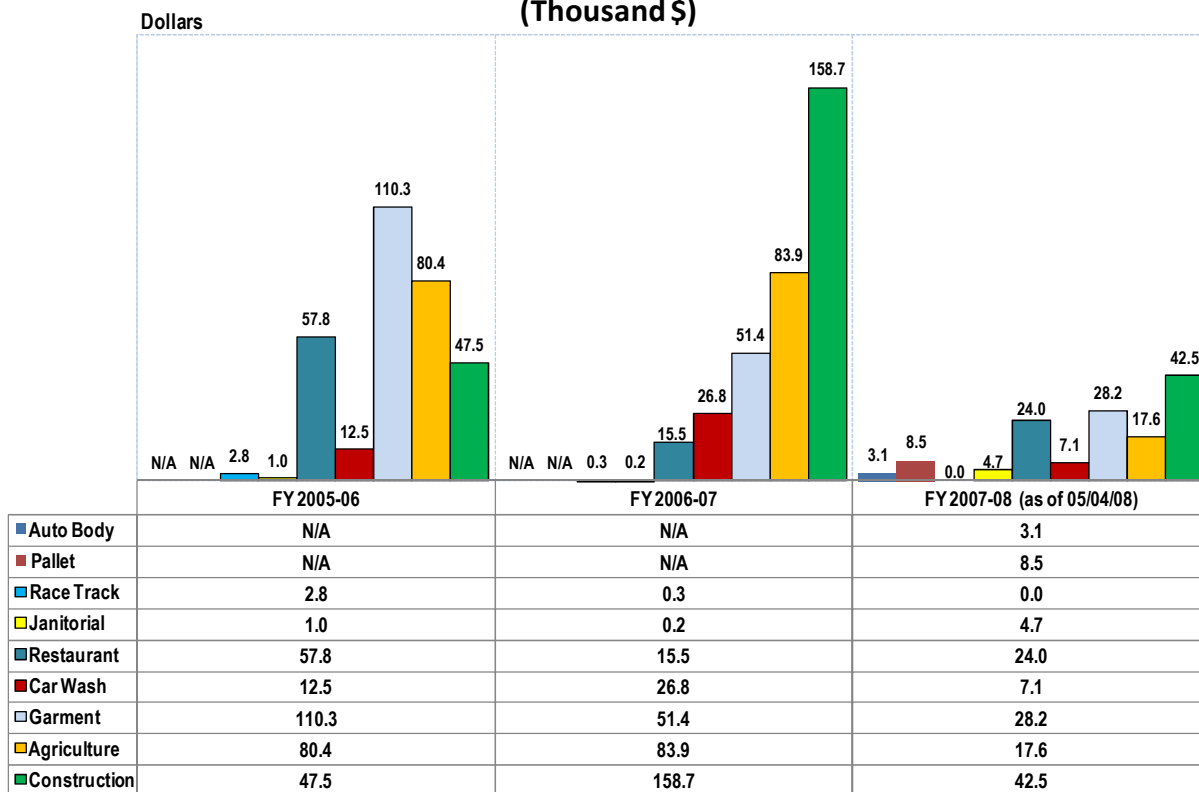
## EEEC Report: Penalties Assessed FY 2005-2006 - FY 2007-2008 (Thousand \$)



Data Source: DIR - DOSH

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### EEEC Report: Penalties Collected FY 2005-2006 - FY 2007-2008 (Thousand \$)



Data Source: DIR - DOSH

### High Hazard Identification, Consultation and Compliance Programs

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

#### *High Hazard Employer Program*

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to these employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

In 1999, the passage of Assembly Bill (AB) 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis.

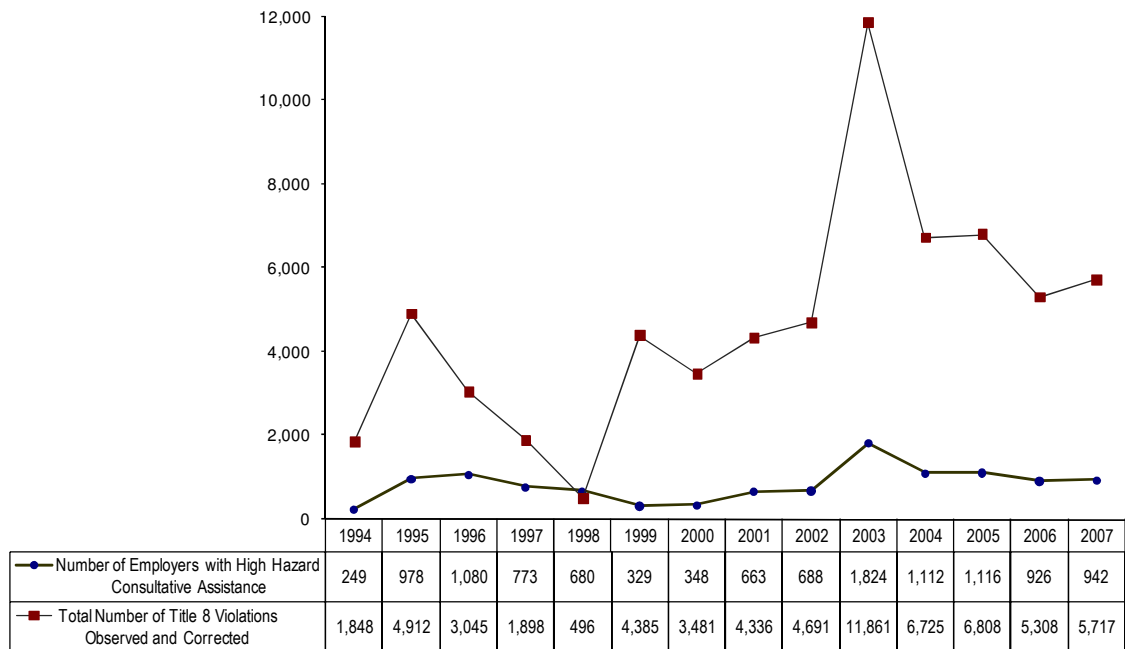
### *High Hazard Consultation Program*

DOSH reports that in 2007, it provided on-site high hazard consultative assistance to 942 employers, as compared to 926 employers in 2006. During consultation with these employers, 5,717 Title 8 violations were observed and corrected as a result of the provision of consultative assistance.

Since 1994, 11,708 employers have been provided direct on-site consultative assistance, and 65,511 Title 8 violations have been observed and corrected. Of these violations, 38.6 percent were classified as "serious."

The following chart indicates the yearly number of consultations and violations observed and corrected during the years 1994-2007. It should be noted that for years 2002 and 2003, all Consultative Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Consultation Program figures. Effective 2004, only SHIPs with experience modification (Ex-Mod) rates of 125 percent and above are included in the High Hazard Consultation Program figures.

**High Hazard Consultation Program Production by Year**



Data Source: Division of Occupational Safety and Health

The efficacy of High Hazard Consultation is measured by comparisons of employer lost and restricted workday data. Beginning in 2001, Log 200 was replaced with Log 300 as the source for lost and restricted workday data. The use of the Lost Work Day Case Incidence (LWDI) rate was transitioned and replaced with the Days Away, Restricted, or Transferred (DART) rate. Additionally, High Hazard Consultation uses Ex-Mod rates to measure efficacy.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *High Hazard Enforcement Program*

DOSH reports that in 2007, 477 employers underwent a targeted high hazard enforcement inspection, up from 448 employers in 2006. During these inspections in 2007, 2,405 violations were observed and cited, whereas in 2006, 2,633 violations were observed and cited.

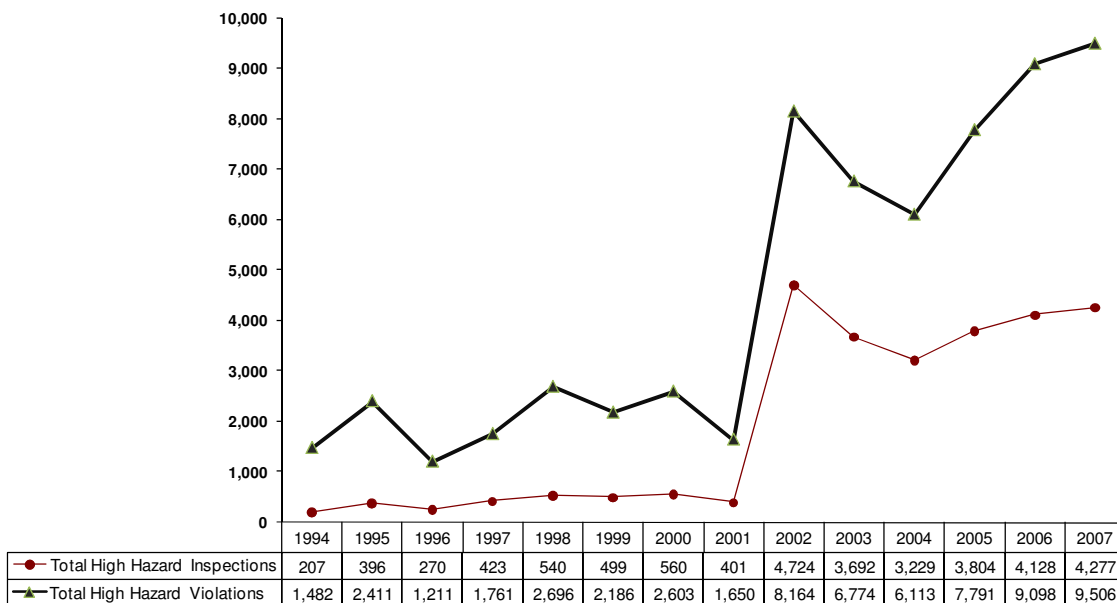
In addition, in 2007, 721 employers underwent an inspection as part of the Agricultural Safety and Health Inspection Project (ASHIP). Of these, 2 inspections were also targeted. During these inspections, 1,366 violations were observed and cited.

In addition, in 2007, 3,079 employers underwent an inspection as part of the Construction Safety and Health Inspection Project (CSHIP). Of these, 22 inspections were also targeted. During these inspections, 5,735 violations were observed and cited.

Since 1994, 27,660 employers have undergone a high hazard enforcement inspection, and 64,090 Title 8 violations have been observed and cited. Of these violations, 34.7 percent were classified as "serious."

The chart below indicates the yearly number of targeted inspections and violations observed and cited during the years 1994-2007. It should be noted that effective 2002, the Safety and Health Inspection Projects (SHIPs) are included in the High Hazard Enforcement Program figures.

**High Hazard Enforcement Program Inspections and Violations**



Data Source: Division of Occupational Safety and Health

The same lost-and-restricted-workday methodology is used for both the High Hazard Consultation and Enforcement programs. Efficacy is measured by comparisons of employer lost-and-restricted-workday data.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Beginning in 2001, Log 200 was replaced with Log 300 as the source for lost-and-restricted-workday data. The use of the lost-workday-incentive (LWDI) rate was transitioned and replaced with the days-away, restricted or transferred (DART) rate.

*For further information...*

- Additional information can be obtained by visiting the Cal/OSHA website at [www.dir.ca.gov/DOSH](http://www.dir.ca.gov/DOSH) or by e-mailing questions or requests to [InfoCons@dir.ca.gov](mailto:InfoCons@dir.ca.gov).

### **Safety Inspections**

DOSH has two major units devoted to conducting inspections to protect the public from safety hazards:

- The Elevator, Ride and Tramway Unit conducts public safety inspections of elevators, amusement rides, both portable and permanent, and aerial passenger tramways or ski lifts.
- The Pressure Vessel Unit conducts public safety inspections of boilers (pressure vessels used to generate steam pressure by the application of heat, air and liquid storage tanks, and other types of pressure vessels).

### **Health and Safety Standards**

The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The mission of OSHSB is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for California workers.

To meet the DIR Goal 1 on ensuring that California workplaces are lawful and safe, the Board shall pursue the following goals:

- Adopt and maintain effective occupational safety and health standards.
- Evaluate petitions to determine the need for new or revised occupational safety and health standards.
- Evaluate permanent variance applications from occupational safety and health standards to determine if equivalent safety will be provided.

OSHSB also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The OSHSB safety and health standards provide the basis for Cal/OSHA enforcement.

*For further information...*



[www.dir.ca.gov/OSHSB/oshsb.html](http://www.dir.ca.gov/OSHSB/oshsb.html)

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### ***Ergonomics Standards***

Efforts to adopt an ergonomics standard in California and the United States are outlined in the following "brief histories."

#### **Ergonomics Standard in California: A Brief History**

**July 16, 1993**

Governor Pete Wilson signs a package of bills that enacts major reform of California's workers' compensation system. A provision in AB 110 (Peace) added Section 6357 to the Labor Code requiring the Occupational Safety and Health Standards Board (OSHSB) to adopt workplace ergonomics standards by January 1, 1995, in order to minimize repetitive motion injuries.

**January 18 and 23, 1996**

OSHSB holds public hearings on the proposed ergonomics standard and receives over 900 comments from 203 commentators. The proposed standards are revised.

**July 15, 1996**

OSHSB provides a 15-day public comment period on revisions to proposed standards.

**September 19, 1996**

OSHSB discusses the proposal at its business meeting and makes further revisions.

**October 2, 1996**

OSHSB provides a 15-day public comment period on the further revisions.

**November 14, 1996**

OSHSB adopts the proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

**January 2, 1997**

OAL disapproves the proposed regulations based on clarity issues.

**February 25, 1997**

OSHSB provides a 15-day public comment period on new revisions addressing OAL concerns.

**April 17, 1997**

OSHSB adopts the new revisions and resubmits the proposal to OAL.

**June 3, 1997**

Proposed ergonomics standard is approved by OAL and becomes Title 8, California Code Regulations (8 CCR), Section (§) 5110, Repetitive Motion Injuries.

**July 3, 1997**

The ergonomics standard – 8 CCR §5110 - becomes effective.

**September 5, 1997**

Sacramento Superior Court holds a hearing to resolve the legal disputes filed by labor and business industries.

**October 15, 1997**

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgment, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

**December 12, 1997**

OSHSB appealed Judge Ford's Order with its legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

(Continued on following page)

Source: OSHSB

### **Federal Ergonomics Standard: A Brief History**

**1990**

Former United States Secretary of Labor Elizabeth Dole pledges to “take the most effective steps necessary to address the problem of ergonomic hazards on an industry-wide basis.”

**July 1991**

OSHA publishes “Ergonomics: The Study of Work.” More than 30 organizations petition Secretary of Labor to issue an Emergency Temporary Standard.

**April 1992**

Secretary of Labor denies petition for Emergency Temporary Standard.

**August 1992**

OSHA publishes an Advance Notice of Proposed Rulemaking on ergonomics.

**1993**

OSHA conducts survey to obtain information on the extent of ergonomics programs.

**March 1995**

OSHA begins meeting with stakeholders to discuss approaches to drafting an ergonomics standard.

**January 1997**

OSHA/NIOSH conference on successful ergonomics programs.

**February 1998**

OSHA begins meetings with national stakeholders about the draft ergonomics standard under development.

**February 1999**

OSHA begins small business review (SBREFA) of its draft and makes draft regulatory text available to the public.

**April 1999**

OSHA receives SBREFA report on draft and begins to address the concerns raised in the report.

**November 23, 1999**

OSHA publishes proposed ergonomics program standard by filing in the Federal Register (64 FR 65768). OSHA asks for written comments from the public, including materials such as studies and journal articles and notices of intention to appear at informal public hearings.

**March-May 2000**

Informal public hearings held in Washington D.C. (March 13 - April 7, May 8-12), Chicago (April 11-21) and Portland (April 24 - May 5).

**May 24, 2000**

The House Appropriations Committee votes to amend \$342 billion spending bill by barring the Occupational Safety and Health Administration from using their budget to promulgate, issue, implement, administer or enforce any ergonomics standard. President Clinton responds by threatening to veto the bill.

Source: OSHSB

(Continued on following page)

**Federal Ergonomics Standard: A Brief History (continued)**

**November 14, 2000**

OSHA issues Ergonomics Program Standard.

**January 16, 2001**

Final Ergonomics Program Standard - 29 CFR 1910.900 - becomes effective. The standard was challenged in court with over 30 lawsuits.

**March 20, 2001**

President George W. Bush signs into law S.J. Res. 6, a measure that repeals the ergonomic regulation. This is the first time the Congressional Review Act has been put to use. The Congressional Review Act allows Congress to review every new federal regulation issued by the government agencies and, by passage of a joint resolution, overrule a regulation.

**April 23, 2001**

Federal OSHA publishes a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed as of that date.

**April 26, 2001**

Secretary of Labor Elaine L. Chao testifies before the Subcommittee on Labor, Health and Human Services, and Education of the Senate Appropriations Committee, about reducing musculoskeletal disorders in the workplace.

**April 5, 2002**

The Occupational Safety and Health Administration unveils a comprehensive plan designed to reduce ergonomic injuries through "a combination of industry-targeted guidelines, tough enforcement measures, workplace outreach, advanced research, and dedicated efforts to protect Hispanic and other immigrant workers."

Source: OSHSB

**Occupational Health and Safety Appeals Board (OSHAB)**

The Occupational Safety and Health Appeals Board (OSHAB) consists of three members appointed by the governor for four-year terms. By statute, the members are selected each from the field of management, labor, and the general public. The chairman is selected by the governor.

The mission of OSHAB is to fairly, timely and efficiently resolve appeals and to provide clear, consistent guidance to the public, thereby promoting workplace health and safety. OSHAB handles appeals from private and public sector employers regarding citations issued by DOSH for alleged violation of workplace health and safety laws and regulations.



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

As the two Tables below show, of 2,573 appeals disposed of in the first half of 2006,<sup>29</sup> 75 percent were settled by Appeals Law Judges (ALJ) Orders at prehearings or before hearings took place; 3 percent were decided at hearings; 6 percent were settled by Orders of the Board; 9 percent were withdrawn by employers; and 7 percent were dismissed by the Board. Separately from this report, employers withdrew intent to appeal for 1 appeal representing 1 case that had not yet been docketed by the Board.

**Table: OSH Appeals Board, 2006**

Month	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED STIP/DISPOS		EMPLOYER WITHDREW		BOARD DISMISSALS		TOTAL APPEALS
		ORDERS		DECISIONS								
		DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DISPOSALS
JAN	405	256	112	18	9	90	25	20	10	44	22	428
FEB	320	152	74	16	6	0	0	22	11	22	1	212
MAR	506	268	138	9	6	19	9	2	1	27	16	325
APR	259	362	189	7	6	30	11	72	36	42	22	513
MAY	592	360	171	24	13	15	5	112	56	38	19	549
JUNE	508	510	244	12	9	0	0	12	8	12	6	546
TOTL	2590	1908	928	86	49	154	50	240	122	185	86	2573

Data Source: OSHAB

**Table: OSH Appeals Board, 2006**

MONTH	FILED DOCKETS	FILED CASES	ISSUED DOCKETS	ISSUED CASES	ISSUED DOCKETS	ISSUED CASES	FOR WRITS	FOR WRITS CONCLUDED
JAN	6	3	0	0	23	8	0	0
FEB	2	1	0	0	10	2	0	1
MAR	2	1	2	2	0	0	0	0
APR	2	2	2	2	2	2	0	3
MAY	8	5	0	0	0	0	0	0
JUNE	4	3	7	1	1	1	0	2

Data Source: OSHAB

As the following two Tables show, of 4,377 appeals disposed of in CY 2005, 76 percent were settled by ALJ Orders at prehearings or before hearings took place; 5 percent were decided at hearings; 11 percent were settled by Orders of the Board; 4 percent were withdrawn by employers; and 5 percent were dismissed by the Board.

Separately from this report, employers withdrew intent to appeal for 175 appeals representing 84 cases that had not yet been docketed by the Board.

<sup>29</sup> Data for calendar year 2006 were only available from January through June 2006 from OSHAB.

# WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Table: OSH Appeals Board, 2005**

MONTH	APPEALS	ORDERS		DECISIONS		STIP/DISPOS		WITHDREW		DISMISSALS		APPEALS
	DOCKETED	DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DOCKETS	CASES	DISPOSALS
JAN	422	224	98	3	2	0	0	0	0	0	0	227
FEB	435	161	82	29	7	87	23	0	0	4	1	281
MAR	400	289	144	17	11	70	19	2	1	0	0	378
APR	406	196	134	15	11	66	21	1	1	16	7	294
MAY	187	367	164	46	10	34	15	92	35	0	0	539
JUNE	517	304	164	14	8	11	4	1	1	0	0	330
JULY	372	275	129	13	8	32	13	2	2	30	11	352
AUG	345	392	188	9	5	37	15	9	5	31	13	478
SEPT	380	324	139	28	12	25	9	19	13	89	30	485
OCT	419	251	117	20	7	88	25	48	25	25	10	432
NOV	326	255	115	4	3	14	4	1	1	4	2	278
DEC	442	270	118	20	10	10	3	0	0	3	3	303
TOTAL	4651	3308	1592	218	94	474	151	175	84	202	77	4377

Data Source: OSHAB

**Table: OSH Appeals Board, 2005**

MONTH	RECONS FILED DOCKETS	RECONS FILED CASES	DARS ISSUED DOCKETS	DARS ISSUED CASES	DENIALS ISSUED DOCKETS	DENIALS ISSUED CASES	PETITS. FOR WRITS	PETITS. FOR WRITS CONCLUDED
JAN	6	1	0	0	2	1	1	2
FEB	12	2	3	1	1	1	1	0
MAR	11	5	0	0	0	0	1	0
APR	13	4	0	0	0	0	0	0
MAY	8	6	1	1	3	2	0	2
JUNE	33	5	0	0	12	2	1	0
JULY	6	4	0	0	4	2	0	1
AUG	1	1	0	0	0	0	0	1
SEPT	8	5	0	0	0	0	0	1
OCT	4	3	0	0	1	1	0	1
NOV	11	6	0	0	3	1		
DEC	19	6	1	1	1	1		
TOTAL	132	48	5	3	27	11	4	8

Data Source: OSHAB

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### **Educational and Outreach Programs**

In conjunction and cooperation with the entire health and safety and workers' compensation community, DIR administers and participates in several major efforts to improve occupational health and safety through education and outreach programs.

#### *Worker Occupational Safety and Health Training and Education Program*

The Commission on Health and Safety and Workers' Compensation (CHSWC) is mandated by Labor Code Section 6354.7 to maintain the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The purpose of WOSHTEP is to promote injury and illness prevention programs. For more information about WOSHTEP and its activities, see the Projects and Studies section of this report.

#### *The California Partnership for Young Worker Health and Safety*

CHSWC has convened the California Partnership for Young Worker Health and Safety. The Partnership is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers and others. The Partnership develops and promotes strategies to protect youth at work and provides training, educational materials, technical assistance, and information and referrals to help educate young workers. See the Projects and Studies section of this report for more information about the Partnership.

#### *Cal/OSHA Consultation*

Consultative assistance is provided to employers through on-site visits, telephone support, publications and educational outreach. All services provided by Cal/OSHA Consultation are provided free of charge to California employers.

#### *Partnership Programs*

California has developed several programs that rely on industry, labor, and government to work as partners in encouraging and recognizing workplace health and safety programs that effectively prevent and control injuries and illnesses to workers. These partnership programs include the Voluntary Protection Program (VPP), Golden State, SHARP, Golden Gate, and special alliances formed between industry, labor, and OSHA.

## **UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY**

### **Background**

In California, approximately two-thirds of the total payroll in the State is covered for workers' compensation through insurance policies, while the remainder is through self-insurance. There are more than 100 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

The California Department of Insurance (CDI) oversees these insurers. To accomplish its principal objective of protecting insurance policyholders in the state, CDI examines insurance companies to ensure that operations are consistent with the requirements of the Insurance Code.

### *Minimum Rate Law and Open Rating*

In 1993, workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates that are intended to cover other costs and expenses, including unallocated loss-adjustment expenses.

### **Insurance Market After Elimination of Minimum Rate Law**

Subsequent to the repeal of the minimum rate law effective January 1995, changes were noted in the actions of insurers and employers.

### *Price Competition*

Open rating apparently spurred competition among insurers seeking to retain or add to their market share. Some insurers attempted to increase their market share by writing coverage at low prices that eventually proved to be below loss costs. This deregulated market kept premium rates near their historic lows throughout the latter half of the 1990s, even though losses were no longer declining.

As the link between the price of insurance and loss costs became more and more tenuous, some insurers left the State, others ceased writing workers' compensation or were merged or acquired by other carriers, and still others, including several of the largest insurers in the State, became insolvent and had to be taken over or supervised by the State. As a result, the workers' compensation market became much more concentrated than in the past, with only a few insurers, aside from SCIF, which were mostly large, national carriers, accounting for the largest portion of statewide premium.

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### **Insurers Liquidated since 2000**

#### **2000**

California Compensation Insurance Company  
Combined Benefits Insurance Company  
Commercial Compensation Casualty Insurance Company  
Credit General Indemnity Company  
LMI Insurance Company  
Superior National Insurance Company  
Superior Pacific Insurance Company

#### **2001**

Credit General Insurance Company  
Great States Insurance Company  
HIH America Compensation & Liability Insurance Company  
Amwest Surety Insurance Company  
Sable Insurance Company  
Reliance Insurance Company  
Far West Insurance Company  
Frontier Pacific Insurance Company

#### **2002**

PHICO  
National Auto Casualty Insurance Company  
Paula Insurance Company  
Alistar Insurance Company

#### **2003**

Western Growers Insurance Company  
Legion Insurance Company  
Villanova Insurance Company  
Home Insurance Company  
Fremont General Corporation  
Wasatch Crest Insurance Co. (No WC policies)  
Pacific National Insurance Company

#### **2004**

Protective National Insurance Company  
Holland-America Insurance Company  
Casualty Reciprocal Exchange

#### **2005**

Cascade National Insurance Company/Washington  
South Carolina Insurance Company/South Carolina  
Consolidated American Insurance Company/South Carolina

#### **2006**

Vesta Fire Insurance Company  
Hawaiian Insurance & Guaranty Company  
Municipal Mutual Insurance Company  
Source: CIGA

### *Insurance Market Changes*

Since 2000, a significant number of workers' compensation insurance companies have experienced problems with payment of workers' compensation claims. Thirty-five insurance companies have gone under liquidation and 13 companies have withdrawn from offering workers' compensation insurance during that time. However, since 2004, 22 insurance/reinsurance companies have entered the California workers' compensation market, while only 6 companies withdrew from the market.<sup>30</sup>

### *Changing Insurers*

WCIRB estimated that before open rating, about 25 percent of California employers with experience modifications (Ex-Mods) changed insurance carriers each year. After open rating, about 35 percent of the employers did so. However, in many post-open rating situations, employers had no choice but to change insurers, as the market had deteriorated to the point that many carriers, including several of the largest workers' compensation insurers in the State, ceased to exist or stopped writing workers' compensation in California.

### *Reinsurance*

After open rating, many carriers shifted the risk of their workers' compensation claims to other insurance companies, some of which were inexperienced with the California workers' compensation insurance market. It was reported that many carriers used reinsurance aggressively in order to mitigate the risk of having to make large future payoffs. Some primary workers' compensation carriers offered extremely low rates that proved to be inadequate in the face of soaring losses. Some reinsurance companies also sold off their risk to other reinsurers in a process called "retrocession." During 1999, several major reinsurance pools experienced financial difficulty and ceased operations.

### **Impact of Recent Workers' Compensation Reforms on Insurance Companies**

The workers' compensation reform legislation, Senate Bill (SB) 228, Assembly Bill (AB) 227, and SB 899, were enacted with the intent of controlling costs and improving the benefit-delivery process in the workers' compensation system.

In 2007, SB 316 eliminated a duplicative reserve requirement that was inadvertently not removed when risk-based capital requirements went into effect for workers' compensation insurers in 2002. That same bill also mandated a study by CHSWC of the causes of many of the insolvencies in this decade. The study is under contract with RAND and is currently underway. It is expected that recommendations from the study will also address prevention of future insolvencies.

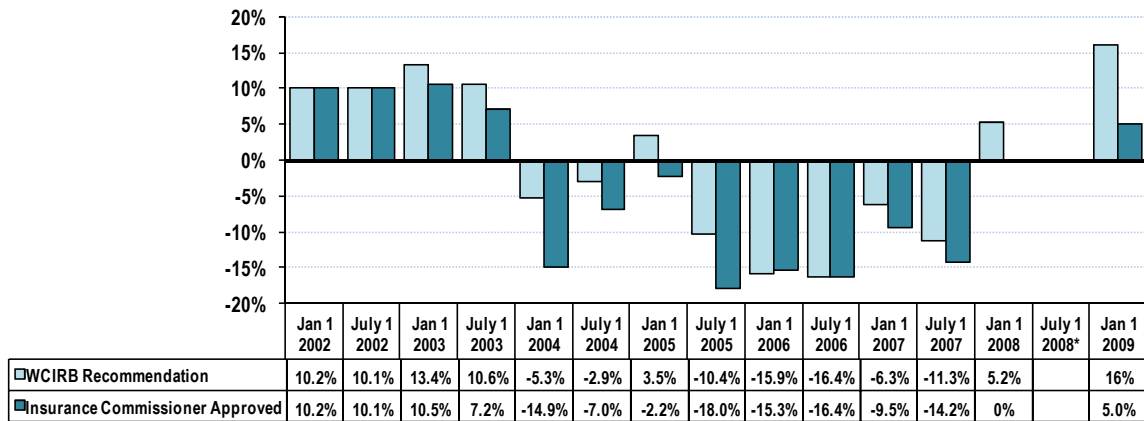
<sup>30</sup> The information on the companies that have withdrawn and entered the market since 2004 is through 08/31/2008.

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### Workers' Compensation Advisory Premium Rates

As a result of the reforms, WCIRB recommended changes and the IC approved either decreases or no changes in the pure premium advisory rates between January 2004 and January 2008. As shown on the following chart, WCIRB recommended a 16 percent increase to the advisory rates effective January 1, 2009, due primarily to the increasing medical costs. On October 24, 2008, the IC approved a 5 percent increase in pure premium rates. (A history of pure premium rates since 1993 appears later in this section.)

### Changes in Workers' Compensation Advisory Premium Rates WCIRB Recommendation vs Insurance Commissioner Approval

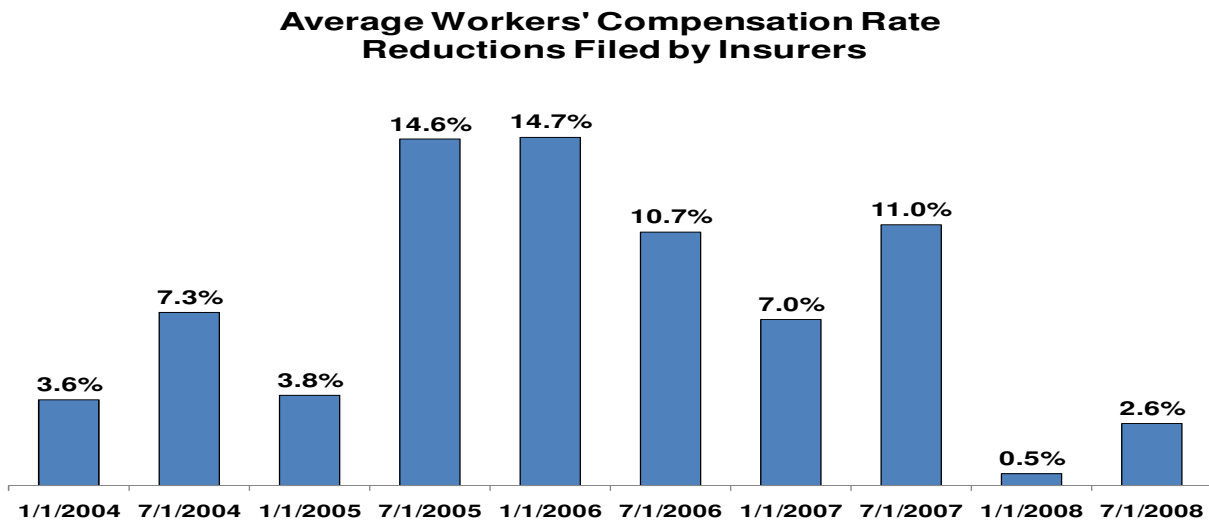


\* WCIRB did not issue any recommendations for changes to pure premium rates effective July 1, 2008, and the IC did not issue the interim advisory rate for this period.

Data Source: WCIRB

### California Workers' Compensation Filed Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory premium rates, workers' compensation insurers have reduced their average filed rates as indicated in the chart below.



Data Source: California Department of Insurance

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### California Workers' Compensation Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the IC on advisory pure premium rates, the top ten California workers' compensation insurers have reduced their filed rates as indicated in the table below.

As of July 1, 2008, the cumulative premium weighted average rate reduction filed by insurers with the CDI since the reforms is 57.4 percent for all writers including SCIF. There have been eight pure premium rate reductions since the passage of AB 227 and SB 228, and individually stated, filed insurer rates were reduced 3.6 percent on January 1, 2004, 7.3 percent on July 1, 2004, 3.8 percent on January 1, 2005, 14.6 percent on July 1, 2005, 14.7 percent on January 1, 2006, 10.7 percent on July 1, 2006, 7.0 percent on January 1, 2007 and 11.0 percent on July 1, 2007. Additional insurer rate reductions of 0.5 percent on January 1, 2008, and 2.6 percent on July 1, 2008, not tied to pure premium rate reductions have also been filed.<sup>31</sup>

WCIRB reports that actual rates charged in the market place as of December 31, 2007, had fallen by 62 percent since the enactment of AB 227, SB 228, and SB 899. The average rate fell from \$6.45 in the second half of 2003 to \$2.45 in the second half of 2007.<sup>32</sup> For more recent information on average rates per \$100 of payroll, see the System Costs and Benefits Overview section of this Annual Report.

### California Workers' Compensation Top 10 Insurers Rate Filing Changes

COMPANY NAME	GROUP NAME	Market Share 2007	Cumulative Rate Change 1-04 to 7-08	7-1-2008 % Filed Rate Change	1-1-2008 % Filed Rate Change	7-1-2007 % Filed Rate Change	1-1-2007 % Filed Rate Change
STATE COMPENSATION INSURANCE FUND		26.55%	-56.41%	-3.50%	0.0%	-11.00%	-9.00%
AMERICAN HOME ASSURANCE COMPANY	AIG Group	4.53%	-59.75%	-15.00%	0.0%	-14.20%	-10.90%
ZURICH AMERICAN INSURANCE COMPANY	Zurich Ins. Group	3.27%	-63.66%	n/a	-0.2%	-14.20%	-7.90%
ZENITH INSURANCE COMPANY	Zenith National Group	3.16%	-38.43%	n/a	0.0%	n/a	-4.40%
ENDURANCE REINS CORP. OF AMERICA	Endurance Group	2.92%	-43.20%	n/a	0.0%	-14.20%	-24.34%
REDWOOD FIRE & CASUALTY INS COMPANY	Berkshire Hathaway Gp	2.86%	-65.27%	n/a	5.20%	-14.90%	-8.10%
EMPLOYERS COMPENSATION INSURANCE COMPANY	Employers Group	2.76%	-62.51%	-0.60%	n/a	-4.50%	-9.90%
LIBERTY MUTUAL FIRE INSURANCE COMPANY	Liberty Mutual Group	1.70%	-57.53%	n/a	0.10%	-10.20%	-6.30%
OAK RIVER INSURANCE COMPANY	Berkshire Hathaway Gp	1.66%	-77.87%	-1.50%	-0.70%	-14.95%	-6.70%
WAUSAU UNDERWRITERS INSURANCE COMPANY	Liberty Mutual Group	1.66%	-73.56%	n/a	-3.30%	-11.70%	-9.50%

<sup>31</sup> Source: California Department of Insurance, RFLA3 Rate Filing Bureau.

<sup>32</sup> Source: WCIRB Summary of December 31, 2007 Insurer Experience, released March 31, 2008.

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

Since the first reform package was chaptered, 29 new insurers have entered the market, and existing private insurers have increased their writings. The significant rate reductions totaling 57.4 percent since the first reforms were enacted, coupled with the reduced market share of SCIF (which peaked at 53.0 percent in 2003, has declined to 26.5 percent in 2007, and is expected to drop to the low 20 percent range in 2008), combined with a 2007 accident year combined loss and expense ratio of 78 percent,<sup>33</sup> all point to the dramatic success of the cost-containment reforms and a stabilizing market with increased capacity and greater rate competition.

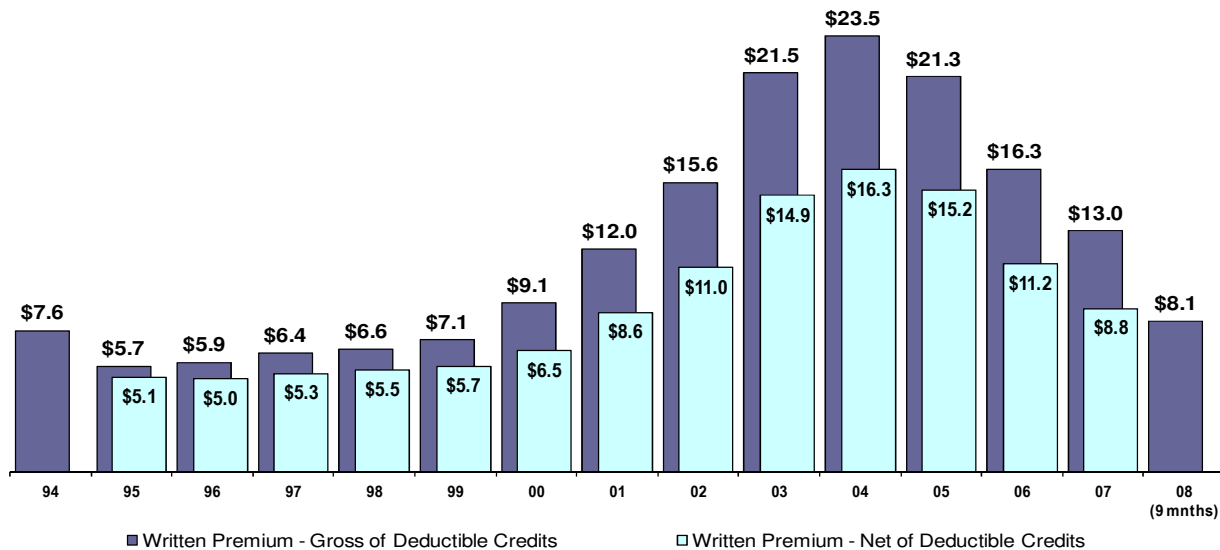
### Workers' Compensation Premium

After elimination of the minimum rate law, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, movement from self-insurance to insurance, and other factors rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the decade.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium has increased by 37.8 percent to \$21.5 billion from 2002 to 2003 and increased by 9 percent to a peak of \$23.5 billion from 2003 to 2004. The written premium declined by 44.7 percent from \$23.5 billion to \$13.0 billion between 2004 and 2007 due to rate decreases.

The chart below shows the California workers' compensation written premium before and after the application of deductible credits. Note that these amounts are exclusive of dividends.

**Workers' Compensation Written Premium as of September 30, 2008**  
(Billion \$)



Data Source: WCIRB

<sup>33</sup> Source: WCIRB Summary December 31, 2007 Insurer Experience, released March 31, 2008.



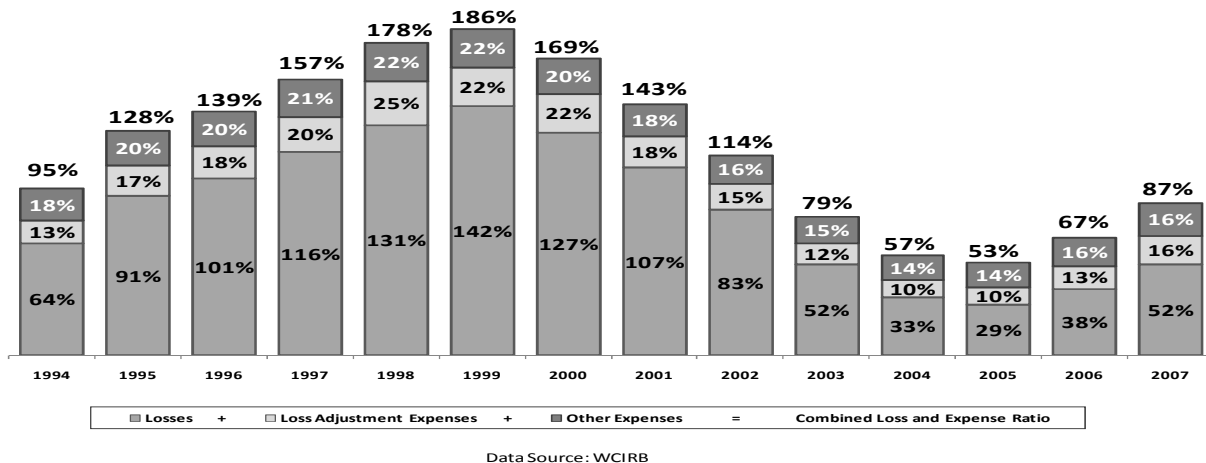
## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### Combined Loss and Expense Ratio

The accident year combined loss and expense ratio, which measures workers' compensation claims payments and administrative expenses against earned premium, increased during the late 1990s, declined from 1999 through 2005, and increased by 64 percent from 2005 to 2007.

In accident year 2007, insurers' claim costs and expenses amounted to \$0.87 for every dollar of premium collected.

**California Workers' Compensation Combined Loss and Expense Ratios  
Reflecting the Estimated Impact of AB 227, SB 228 and SB 899  
(as of September 30, 2008)**

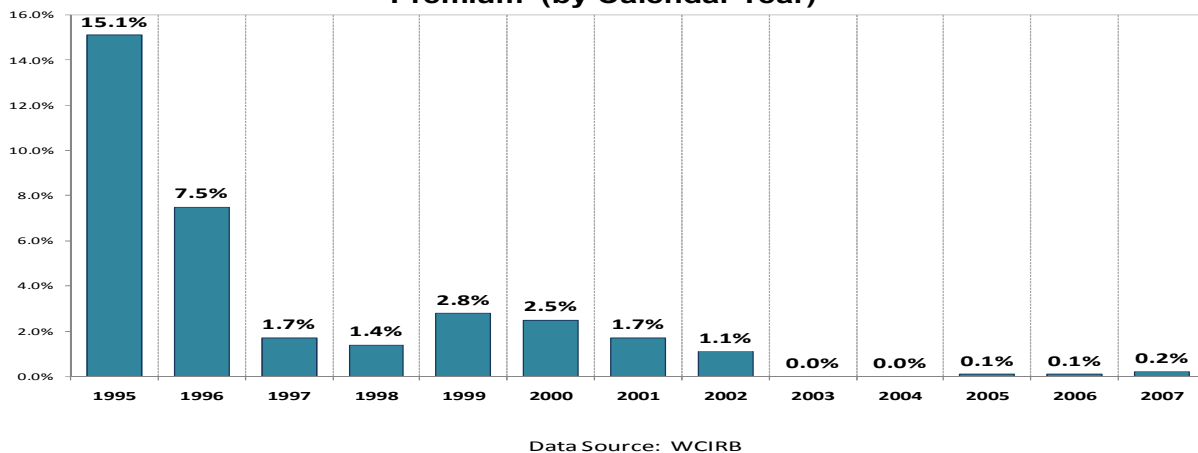


WCIRB estimates that the total cost of benefits on injuries occurring prior to January 1, 2008, is \$7.5 billion less than insurer-reported loss amounts.

### Policy Holder Dividends

Dividends paid to policyholders dropped dramatically from 1995 to 1997, were less than 3 percent from 1997 to 2002, were not paid at all in 2003 and 2004, and then were reinstated from 2005 through 2007 at a very low rate.

**Insurer Policy Holder Dividends as a Percentage of Earned Premium (by Calendar Year)**



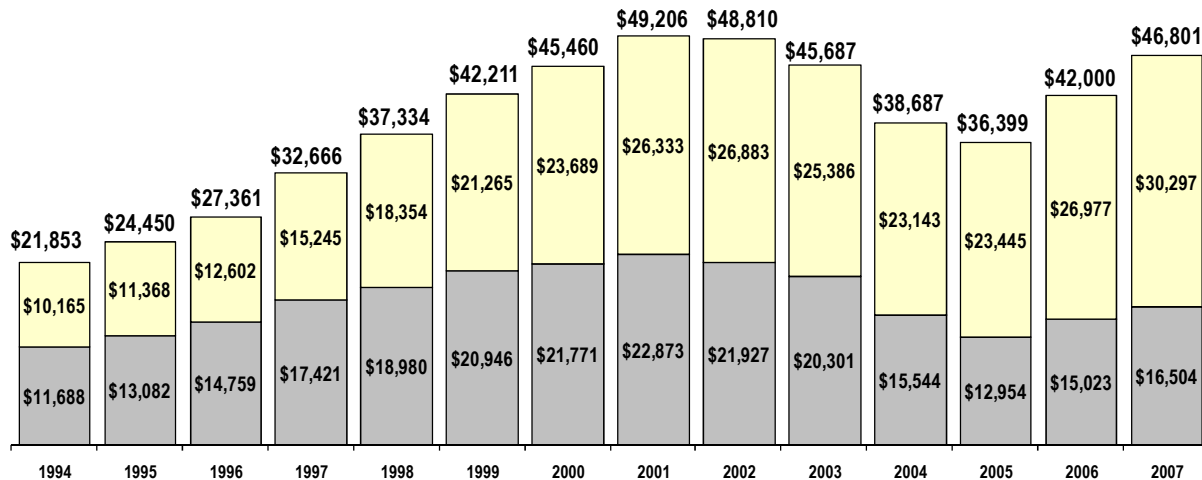
## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply during the late 1990s.

The total average cost of indemnity claims decreased by 26 percent from 2001 to 2005, reflecting the impact of AB 227, SB 228 and SB 899. However, the total indemnity and medical average costs per claim increased by almost 29 percent between 2005 and 2007 back to the 2003 level. Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

**Estimated Ultimate Total Loss\* per Indemnity Claim**  
**Reflecting the Impact of AB 227, SB 228 & SB 899 as of September 30, 2008**



\* Excludes medical-only

■ Estimated ultimate indemnity per indemnity claim +  
■ Estimated ultimate medical per indemnity claim =  
Estimated Ultimate Total Losses per Indemnity Claim

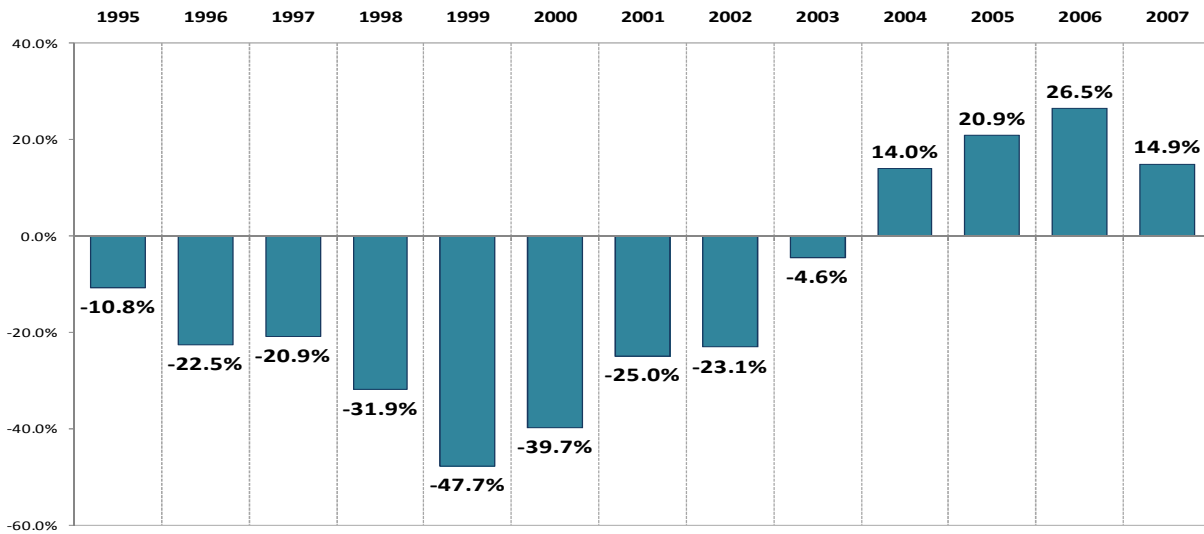
Source: WCIRB

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

### Insurer Profit/Loss

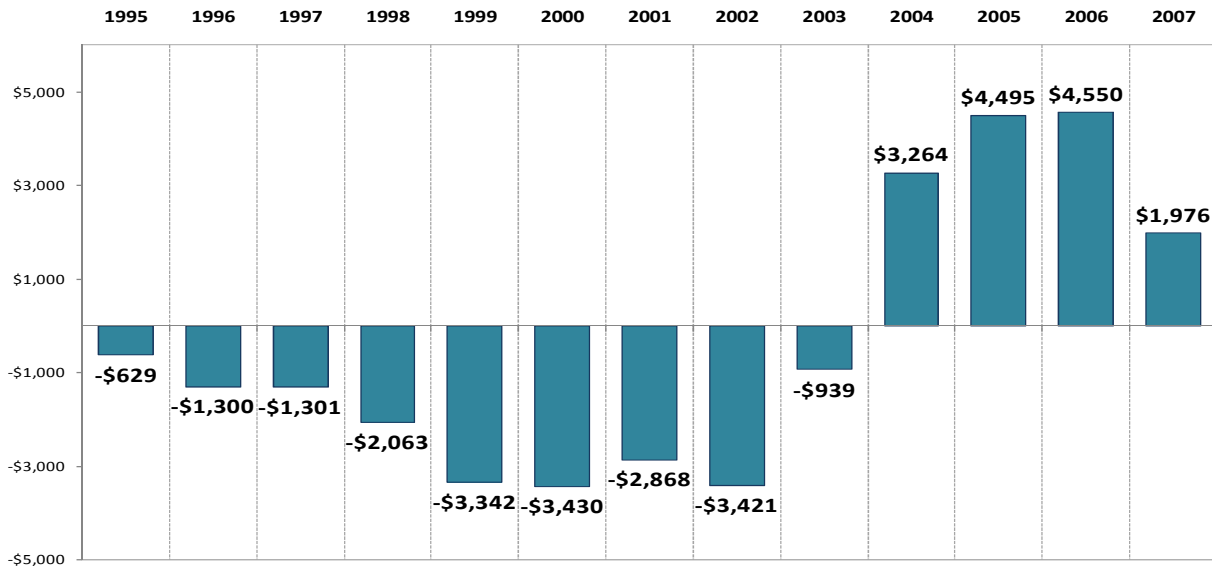
Workers' compensation insurers experienced large fluctuations in profits and losses during the past decade, as measured by actual dollars and percentage of earned premium. Since the reforms of 2004, insurer underwriting profits have been uncharacteristically high. Investment income typically was the main source of insurer profits, but underwriting profits from policies have been a recent trend.

#### Insurer Pre-Tax Underwriting Profit/Loss as a Percentage of Earned Premium



Data Source: WCIRB

#### Insurer Pre-Tax Underwriting Profit/Loss in Million\$



Data Source: WCIRB

## SPECIAL REPORT: CA WORKERS' COMPENSATION INSURANCE INDUSTRY

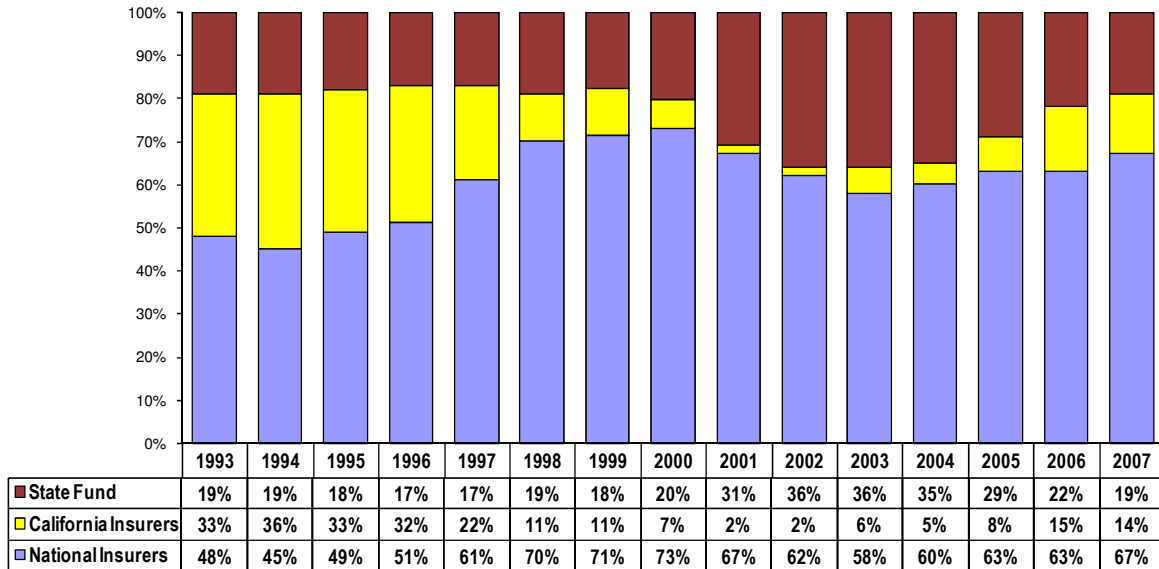
### Current State of the Insurance Industry

#### Market Share

A number of California insurers left the market or reduced their writings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993, as shown in the following chart.

According to WCIRB, from 2002 through 2004, SCIF attained about 35 percent of the California workers' compensation insurance market, double the market share it had in the 1990s. However, between 2004 and 2007, SCIF's market share decreased to 19 percent. On the other hand, the market share of California companies, excluding SCIF, between 2004 and 2007 increased from 5 percent to 14 percent.

**WC Insurance Market Share in California by Type of Insurer**  
Based on Written Premium Prior to Deductible Credits



Source: WCIRB

Please note that totals may not equal 100% due to rounding.

"California Insurers" are defined as private insurers who write at least 80% of their workers' compensation business in California

#### September 11, 2001 Impact on Insurance Industry

The problems in the reinsurance market caused by the events of September 11, 2001, have significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, have a significant effect on the cost of workers' compensation insurance. This effect extends to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace. The insurance industry has remained concerned about the renewal of the Terrorism Risk Insurance Act, often known as TRIA.

**Advisory Workers' Compensation Pure Premium Rates  
A History Since the 1993 Reform Legislation**

Page 1 of 6

**1993**

***Insurance Commissioner approval:***

Pure premium rate reduction of 7 percent effective July 16, 1993, due to a statutory mandate.

**1994**

***WCIRB recommendation:***

No change in pure premium rates.

***Insurance Commissioner approval:***

Two pure premium rate decreases: a decrease of 12.7 percent effective January 1, 1994; and a second decrease of 16 percent effective October 1, 1994.

**1995**

***WCIRB recommendation:***

A 7.4 percent decrease from the pure premium rates that were in effect on January 1, 1994.

***Insurance Commissioner approval:***

A total of 18 percent decrease to the premium rates in effect on January 1, 1994, approved effective January 1, 1995 (including the already approved 16 percent decrease effective October 1, 1994).

**1996**

***WCIRB recommendation:***

An 18.7 percent increase in pure premium rates.

***Insurance Commissioner approval:***

An 11.3 percent increase effective January 1, 1996.

**1997**

***WCIRB recommendation:***

A 2.6 percent decrease in pure premium rates.

***Insurance Commissioner approval:***

A 6.2 percent decrease effective January 1, 1997.

**1998**

***WCIRB recommendation:***

The initial recommendation for a 1.4 percent decrease was later amended to a 0.5 percent increase.

***Insurance Commissioner approval:***

A 2.5 percent decrease effective January 1, 1998.

**1999**

***WCIRB recommendation:***

The WCIRB initial recommendation of a 3.6 percent pure premium rate increase for 1999 was later amended to a recommendation for a 5.8 percent increase.

***Insurance Commissioner approval:***

No change in pure premium rates in 1999.

**Advisory Workers' Compensation Pure Premium Rates  
A History since the 1993 Reform Legislation**

Page 2 of 6

**2000**

***WCIRB recommendation:***

An 18.4 percent increase in the pure premium rate for 2000.

***Insurance Commissioner approval:***

An 18.4 percent increase effective January 1, 2000.

**2001**

***WCIRB recommendation:***

The WCIRB initial recommendation of a 5.5 percent increase in the pure premium rate was later amended to a recommendation for a 10.1 percent increase.

***Insurance Commissioner approval:***

A 10.1 percent increase effective January 1, 2001.

**January 1, 2002**

***WCIRB recommendation:***

The WCIRB initial recommendation of a 9 percent increase in the pure premium rate was later amended to a recommendation for a 10.2 percent increase effective January 1, 2002.

***Insurance Commissioner approval:***

The Insurance Commissioner approved a 10.2 percent increase effective January 1, 2002.

**April 1, 2002**

***WCIRB recommendation:***

On January 16, 2002, the WCIRB submitted recommended changes to the California Workers' Compensation Uniform Statistical Reporting Plan – 1995, effective March 1, 2002 and the California Workers' Compensation Experience Rating Plan – 1995, effective April 1, 2002, related to insolvent insurers and losses associated with the September 11, 2001, terrorist actions. No increase in advisory premium rates was proposed.

***Insurance Commissioner approval:***

The Insurance Commissioner approved the WCIRB's requests effective April 1, 2002.

**July 1, 2002**

***WCIRB recommendation:***

The WCIRB filed a mid-term recommendation that pure premium rates be increased by 10.1 percent effective July 1, 2002, for new and renewal policies with anniversary rating dates on or after July 1, 2002.

***Insurance Commissioner approval:***

On May 20, 2002, the Insurance Commissioner approved a mid-term increase of 10.1 percent effective July 1, 2002.

**January 1, 2003**

***WCIRB recommendation:***

On July 31, 2002, the WCIRB proposed an average increase in pure premium rates of 11.9 percent for 2003. On September 16, 2002, the WCIRB amended the proposed 2003 pure premium rates submitted to the California Department of Insurance (CDI). Based on updated loss experience valued as of June 30, 2002, the WCIRB proposed an average increase of 13.4 percent in pure premium rates to be effective on January 1, 2003, and later policies.

**Advisory Workers' Compensation Pure Premium Rates  
A History since the 1993 Reform Legislation**

Page 3 of 6

**January 1, 2003**

***Insurance Commissioner approval:***

On October 18, 2002, the Insurance Commissioner approved a 10.5 percent increase in pure premium rates applicable to policies with anniversary rating dates in 2003. This increase takes into account the increases in workers' compensation benefits enacted by AB 749 for 2003.

**July 1, 2003**

***WCIRB recommendation:***

The WCIRB filed a mid-term recommendation on April 2, 2003, that pure premium rates be increased by 10.6 percent effective July 1, 2003, for policies with anniversary dates on or after July 1, 2003.

***Insurance Commissioner approval:***

The Insurance Commissioner approved a 7.2 percent increase in pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2003.

**January 1, 2004**

***WCIRB recommendation:***

On July 30, 2003, the WCIRB proposed an average increase in advisory pure premium rates of 12.0 percent to be effective on January 1, 2004, for new and renewal policies with anniversary rating dates on or after January 1, 2004.

The original WCIRB filing of an average increase of 12 percent on July 30, 2003, was later amended on September 29, 2003, to an average decrease of 2.9 percent to reflect the WCIRB's initial evaluation of AB 227 and SB 228.

In an amended filing made on November 3, 2003, the WCIRB recommended that pure premium rates be reduced, on average, from 2.9 percent to 5.3 percent.

***Insurance Commissioner approval:***

On November 7, 2003, the Insurance Commissioner approved a 14.9 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2004.

**July 1, 2004**

***WCIRB recommendation:***

On May 13, 2004, the WCIRB proposed advisory pure premium rates that are a 2.9 percent decrease from the January 1, 2004, approved pure premium rates. These rates reflect the WCIRB's analysis of the impact of provisions of SB 899 on advisory pure premium rates.

***Insurance Commissioner approval:***

In a decision issued May 28, 2004, the Insurance Commissioner approved a 7.0 percent decrease in pure premium rates, effective July 1, 2004, with respect to new and renewal policies, as compared to the approved January 1, 2004, pure premium rates.

**January 1, 2005**

***WCIRB recommendation:***

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the Insurance Commissioner.

***Insurance Commissioner approval:***

In a decision issued November 17, 2004, the Insurance Commissioner approved a total 2.2 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005.

**Advisory Workers' Compensation Pure Premium Rates  
A History since the 1993 Reform Legislation**

Page 4 of 6

**July 1, 2005**

***WCIRB recommendation:***

On March 25, 2005, the WCIRB submitted a filing to the California Insurance Commissioner recommending a 10.4 percent decrease in advisory pure premium rates effective July 1, 2005, on new and renewal policies.

On May 19, 2005, in recognition of the cost impact of the new Permanent Disability Rating Schedule adopted pursuant to SB 899, the WCIRB amended its recommendation. In lieu of the 10.4 percent reduction originally proposed in March, the WCIRB recommended a 13.8 percent reduction in pure premium rates effective July 1, 2005. In addition, the WCIRB recommended a 3.8 percent reduction in the pure premium rates effective July 1, 2005, with respect to the outstanding portion of policies incepting January 1, 2005, through June 30, 2005.

***Insurance Commissioner approval:***

On May 31, 2005, the Insurance Commissioner approved an 18 percent decrease in advisory pure premium rates effective July 1, 2005, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2005. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$23,288. The Insurance Commissioner also approved a 7.9 percent decrease in pure premium rates, effective July 1, 2005, applicable to policies that are outstanding as of July 1, 2005. The reduction in pure premium rates applicable to these policies reflects the estimated impact on the cost of benefits of the new Permanent Disability Rating Schedule.

**January 1, 2006**

***WCIRB recommendation:***

On July 28, 2005, the WCIRB submitted to the California Insurance Commissioner a proposed 5.2 percent average decrease in advisory pure premium rates as well as changes to the California Workers' Compensation Uniform Statistical Reporting Plan -1995 and the California Workers' Compensation Experience Rating Plan - 1995.

On September 15, 2005, the WCIRB amended its filing to propose an average 15.9 percent decrease in pure premium rates based on insurer loss experience valued as of June 30, 2005, and a re-evaluation of the cost impact of the January 1, 2005 Permanent Disability Rating Schedule.

***Insurance Commissioner approval:***

On November 10, 2005, the Insurance Commissioner approved an average 15.3 percent decrease in advisory pure premium rates effective January 1, 2006, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2006. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$20,300.

**July 1, 2006**

***WCIRB recommendation:***

On March 24, 2006, the WCIRB submitted a rate filing to the California Department of Insurance recommending a 16.4 percent decrease in advisory pure premium rates to be effective on policies incepting on or after July 1, 2006. The recommended decrease in pure premium rates is based on an analysis of loss experience valued as of December 31, 2005. The WCIRB filing also includes an amendment to the California Workers' Compensation Experience Rating Plan-1995, effective July 1, 2006, to adjust the experience rating eligibility threshold to reflect the proposed change in pure premium rates. A public hearing on the matters contained in the WCIRB's filing was held April 27, 2006.

***Insurance Commissioner approval:***

On May 31, 2006, the Insurance Commissioner approved a 16.4 percent decrease in advisory pure premium rates effective July 1, 2006, applicable to new and renewal policies as of the first anniversary rating date of a risk on or after July 1, 2006. In addition, the experience rating eligibility threshold was reduced to \$16,971 to reflect the decrease in pure premium rates.



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**January 1, 2007**

***WCIRB recommendation:***

On October 10, 2006, the WCIRB recommended a 6.3 percent decrease in advisory pure premium rates decrease for California policies incepting January 1, 2007.

***Insurance Commissioner approval:***

On November 2, 2006, the Insurance Commissioner approved an average 9.5 percent decrease in advisory pure premium rates effective January 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after January 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$16,000.

**July 1, 2007**

***WCIRB recommendation:***

On March 30, 2007, the WCIRB recommended an 11.3 percent decrease in advisory pure premium rates for California to be effective on policies incepting on or after July 1, 2007.

***Insurance Commissioner approval:***

On May 29, 2007, the Insurance Commissioner approved an average 14.2 percent decrease in advisory pure premium rates effective July 1, 2007, applicable to new and renewal policies with anniversary rating dates on or after July 1, 2007. As a result of the change in pure premium rates, the experience rating eligibility threshold was reduced to \$13,728.

**January 1, 2008**

***WCIRB recommendation:***

On September 23, 2007, the WCIRB recommended 4.2 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2008.

On October 13, 2007, the Governor signed Assembly Bill (AB) 338 which extends the time period for which temporary disability payments may be taken. On October 19, 2007, the WCIRB amended its January 1, 2008 pure premium rate filing to propose an overall 5.2 percent increase in pure premium rates in lieu of 4.2 percent to incorporate the impact of AB 338.

***Insurance Commissioner approval:***

On November 28, 2007, the Insurance Commissioner approved no overall change to the advisory pure premium rates effective January 1, 2008.

**July 1, 2008**

***WCIRB recommendation:***

On March 26, 2008, accepting a recommendation made by the WCIRB Actuarial Committee, the WCIRB Governing Committee decided that the WCIRB would propose 0 percent change in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2008.

**Advisory Workers' Compensation Pure Premium Rates  
A History since the 1993 Reform Legislation**

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**January 1, 2009**

***WCIRB recommendation:***

On August 13, 2008, the WCIRB recommended a 16 percent increase in advisory pure premium rates for California to be effective on policies incepting on or after January 1, 2009. See the WCIRB website below for further details and updates to this information.

At its September 10, 2008 meeting, the Governing Committee agreed that the WCIRB's January 1, 2009 pure premium rate filing should be amended to reflect the most recent accident year experience valued as of June 30, 2008, as well as a revised loss development methodology. The original filing should be supplemented to include a recommendation that the proposed January 1, 2009 pure premium rates be adjusted to reflect (a) the impact of the Division of Workers' Compensation proposed changes to the Permanent Disability Rating Schedule (+3.7%) if adopted as proposed and (b) the impact of SB 1717 (+9.3%) if signed into law by the Governor.

***Insurance Commissioner approval:***

On October 24, 2008, the Insurance Commissioner approved a 5% increase in pure premium rates effective January 1, 2009 applicable to new and renewal policies with anniversary rating dates on or after January 1, 2009.

[https://wcirbonline.org/resources/rate\\_filings/current\\_rate\\_filings.html](https://wcirbonline.org/resources/rate_filings/current_rate_filings.html)

## **SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE**

### **Introduction**

Compensation for permanent partial disability remains one of the more disputed areas of workers' compensation at the policymaking level and at the individual case level. Other disability insurance systems, such as social security or long-term disability insurance policies, cover only total disabilities. Among social insurance systems, workers' compensation is unusual in its attempt to comprehensively address partial disabilities. Of all indemnity and medical benefits paid by California insurers in 2006, 1 percent went to permanent total disability while 22 percent went to permanent partial disability. For 2007, those proportions were similar at 1 percent and 20 percent, respectively.<sup>34</sup> Discussions of permanent disability (PD) usually are focused on the evaluation and compensation of permanent partial disability.

At the public policy level, there is no general agreement on the appropriate level of compensation for PD. For temporary disability, the benchmark is replacement of two-thirds of wage loss. There is no similarly accepted standard for compensation of permanent partial disability. When employers' costs for workers' compensation coverage became clearly excessive in 2002 and 2003, cost savings were sought wherever they could be found. The 2004 legislation required certain PD benefit reductions and created conditions for further reductions. As illustrated later in this report, the statutory changes directly reduced total PD costs by about a third, and the 2005 permanent disability rating schedule (PDRS) reduced the remaining benefits by about half, so that only about one-third of the PD dollars are now payable compared to what they would have been without the 2004 legislation.

California employers have enjoyed dramatic reductions in workers' compensation costs since 2003, largely due to reforms targeted at the largest and fastest growing component of workers' compensation costs, which was and is medical costs. At the same time, injured workers have seen the first substantial decline in PD compensation in decades, possibly in the history of worker's compensation. All of this occurred without a clearly articulated goal for the appropriate levels of compensation for permanent partial disabilities.

PD policy need not be entirely a zero-sum debate. Improved return-to-work (RTW) performance can reduce the losses for injured workers without requiring increased disability compensation payments from employers. Ongoing research provides objective information that can help policymakers optimize the balance between the interests of employers and workers, seeking solutions that meet the needs of all principal stakeholders.

At the individual level, case outcomes remain unpredictable due to unresolved issues over the application of the "new" (2005) rating schedule versus the "old" (1997) rating schedule, the interpretation of the new schedule, and a host of other questions that remain to be answered in the wake of dramatic reforms. The courts have provided interpretations to answer some of those questions. One that remains unresolved as of August 2008 is what evidence is sufficient to rebut the PDRS in an individual case. An injured worker has been found to be entitled to reimbursement for the expense of having a vocational rehabilitation expert analyze the worker's diminished future earning capacity, so employers face increased costs for litigation. The cases have not indicated what evidence from that expert is sufficient to rebut the PDRS, so employers and employees face unpredictable outcomes. Unpredictability promotes litigation and inefficiency and can add to dissatisfaction with the system. The reduction in PD awards, which are the traditional source of attorney fees, has constricted the availability of legal representation for injured workers. Whether the remaining benefits are appropriately targeted to the workers who need them

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<sup>34</sup> Based on Workers' Compensation Insurance Rating Bureau (WCIRB) "2006 California Workers' Compensation Losses and Expenses" released June 18, 2007, and "2007 California Workers' Compensation Losses and Expenses" released June 20, 2008. In calendar year 2006, insurers paid \$1,611,966,000 in permanent partial disability indemnity, and in 2007, they paid \$1,368,612,000. For these purposes, permanent partial disability benefits include life pensions, which are benefits added to permanent partial disability awards of 70 percent to 99 percent. These totals do not include self-insured employers or the state government, but the proportions are assumed to be similar, and systemwide expenditures are estimated as 1.43 times the insurers' expenditures.

## SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

remains to be seen. Other social insurance programs or individuals may be bearing the burden if compensation has been cut too much, while employers may still be paying for excessive benefits in some cases.

Research continues to provide more information on the performance of the PD system and the wage losses that the system is designed to address, and further changes in the permanent disability rating system are expected.

### Evaluation of 2004 – 2005 Reforms

As previously noted, the 2004 legislation and the 2005 revision of the PDRS have collectively eliminated about two-thirds of the benefits payable for permanent partial disabilities. PD cost savings were clearly intended to result from a reduction in the number of weeks of benefits payable for most ratings, from changes to the law of apportionment, from the adoption of return-to-work (RTW) incentives, and from the elimination of subjective ratings through the adoption of the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> edition. The reduction in weeks of benefits was obviously intended to save costs, and the other changes had clear public policy purposes. Administrative implementation was required for the switch to the AMA *Guides*, however, and the legislation provided neither cost/benefit goals nor unambiguous policy goals for the revision of the schedule.

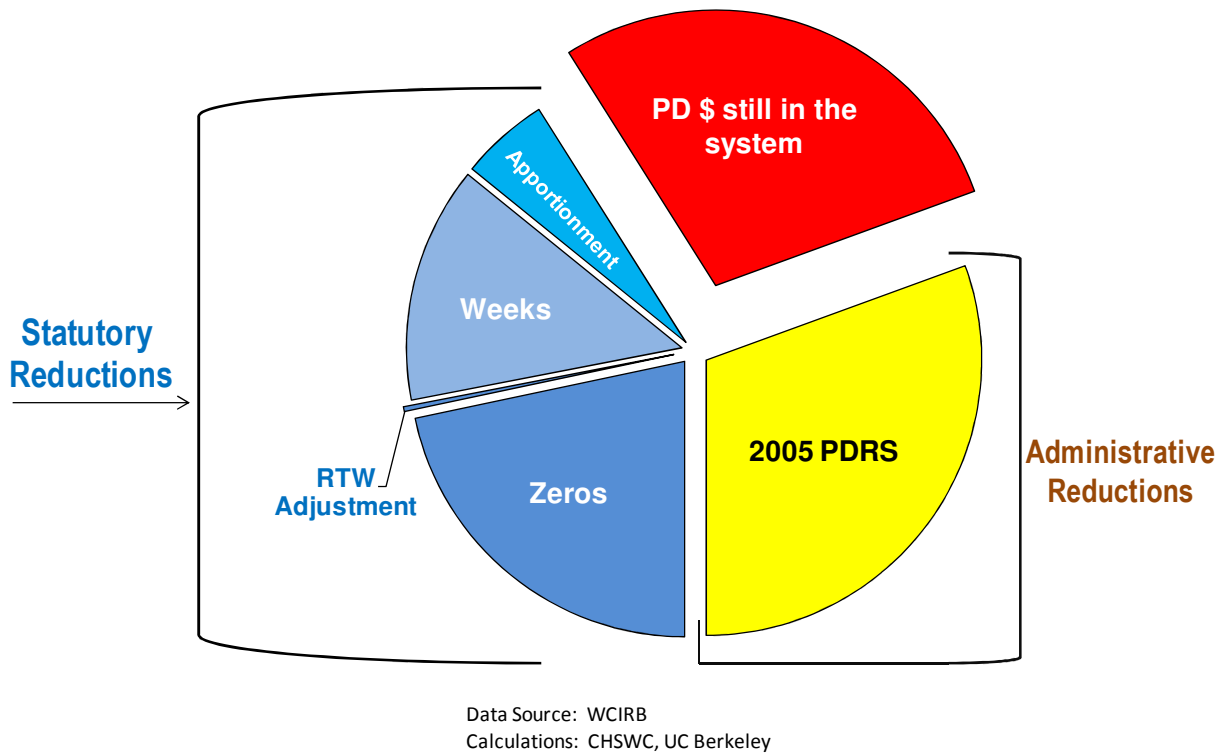
The Administrative Director adopted a revised PDRS that used multipliers to adjust the AMA *Guides* impairment ratings in consideration of diminished future earning capacity. These multipliers, often called FEC factors, serve two purposes. A noncontroversial purpose is to correct for discrepancies where impairment ratings under the AMA *Guides* for injuries to different parts of the body do not have a consistent relationship to the severity of the disability. A more controversial purpose is to increase the scale of the AMA impairment ratings to something closer to the scale of the PD ratings that prevailed for decades under the previous rating system. To the extent that average ratings under the new PDRS are still substantially lower than average ratings under the former PDRS, even for the cases that remain ratable after excluding the subjective disabilities, the revised PDRS itself has contributed to a dramatic reduction in PD compensation.

Statutory Change	Impact
Disability evaluation shall be based on the AMA <i>Guides</i> , 5 <sup>th</sup> edition.	Undetermined. Early evidence suggested 10 percent to 30 percent of cases would be zero-rated and will drop out. Recent observations support the higher range.
The number of weeks of benefits is reduced for all but the most severe ratings.	16 percent reduction in overall PD cost, according to Workers' Compensation Insurance Rating Bureau (WCIRB) estimate.
Where a disability has multiple causes, apportionment is based on causation.	6 percent reduction in awards, based on study of thousands of ratings.
PD payments may be increased or decreased by 15 percent depending on whether the employer offers RTW.	No cost savings demonstrated. Predicted 3 percent savings assumed that statutory criteria would fit real-world situations, which has not occurred.
2005 PD Rating Schedule	Impact
The schedule uses multipliers to scale up AMA impairment ratings, but the percentage ratings remain consistently lower than the old schedule.	52 percent reduction in dollar value of ratings, apart from the impact of statutory changes. (See text regarding limitations of relying on scheduled multipliers.)

## SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

The incurred cost for PD benefits has been reduced by statutory provisions that had clear cost-cutting goals or public policy goals. The cost has been further reduced by administrative interpretation with less clear guidance from the Legislature. Altogether, the aggregate dollar amount of PD benefits was reduced to one-third of what it would have been without the 2004 and 2005 changes.

### Permanent Disability Changes per SB 899 and 2005 PDRS



The chart above implies that the 2005 PDRS is responsible for a benefit reduction larger than statutorily required. Because of the interaction of the statutes and regulations, efforts to address benefit adequacy may not be as simple as revising the schedule. This will be discussed in more detail later in this special report on permanent disability rating schedule.

#### DWC Research

Moving beyond comparisons to the former system, the Division of Workers' Compensation (DWC) has released three studies. These are:

Return to Work Rates for Injured Workers with Permanent Disability, released January, 2007  
<http://www.dir.ca.gov/dwc/ReturnToWorkRates/ReturnToWorkRates.htm>

Wage Loss for Injured Workers with Permanent Disabilities, released March, 2007  
<http://www.dir.ca.gov/dwc/WageLossForInjuredWorkerswithTD/WageLossForInjuredWorkerswithTD.htm>

Uncompensated Wage Loss for Injured Workers with Permanent Disabilities, released May, 2007  
<http://www.dir.ca.gov/dwc/UncompensatedWageLossforInjuredWorkerswithPD/UncompensatedWageLossforInjuredWorkerswithPD.html>

## SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

### *DWC Return-to-Work Study*

In the first study, DWC looked at Employment Development Department (EDD) earnings records of workers who had received PD ratings within 18 months of their dates of injury. A worker would be counted as having returned to work in some fashion if the worker showed any earnings in the EDD quarterly record four quarters after the date of injury. This approximation of the 12-month RTW rate is believed to be a strong predictor of the long-term economic outcome of an injury. The findings indicate that RTW rates improved to 70.0 percent for injuries occurring in 2005, after holding steady at 64.8 percent for 2003-2004 and 64 percent for 2000-2002.

The significance of these findings is difficult to establish. The apparent improvement in the RTW rate could be an artifact of the study methodology, but it could be a real improvement attributable to medical treatment guidelines, statutory incentives for RTW, and a cultural shift in expectations involving injuries and compensation. RTW rates are a leading indicator of wage loss rates, which take longer to study. An improvement in RTW would suggest that average wage losses are being reduced, so the same level of benefit adequacy could be maintained by a slightly lower average permanent partial disability award.

The study incidentally revealed a fact that warrants further investigation. The number of PD ratings meeting the criteria for inclusion in the study fell by more than 75 percent, from over 15,000 cases a year in 2003-2004 to only 3,323 cases in 2005. One implication is that a difference in the sample characteristics may undermine any conclusions drawn from the sample. The more interesting question is, where did all those cases go? This observation tends to support the higher estimates of the “zeros” mentioned previously.

It will be informative to observe how the findings evolve if the RTW study is repeated from year to year, possibly with broader inclusion criteria. The Commission on Health and Safety and Workers' Compensation (CHSWC) recommends that the study be repeated with the same criteria for comparison purposes and with broader criteria to obtain a more comprehensive perspective on RTW performance.

### *DWC Wage Loss Study*

In the second study, DWC examined proportional wage losses and PD ratings for 28,593 workers with dates of injury from October 2000 through June 2003. The DWC study, like the RAND study before it, provides an important picture of the differences in average severity of economic impacts across different types of injuries. One function of the rating schedule is to achieve equity across types of injuries, so that the average compensation is proportional to the average loss of earning capacity regardless of type of injury.

DWC methodology was not identical to the methodology employed in the RAND study of 108,373 workers with dates of injury from 1991 to 1996, so the results are not entirely comparable. Comparisons are further complicated by misunderstandings regarding data methods.<sup>35</sup> It is difficult to identify whether differences in results of the two studies are attributable to the differences in methodology, or to real changes in the economic consequences of injury, or to a combination of factors. The results of the two studies, however, are generally consistent, and small differences in results may not be significant.

The DWC wage loss study provides an important baseline for future research. CHSWC recommends that the wage loss study be repeated using the same methodology for comparison purposes, especially when it becomes possible to observe three-year wage histories on injuries that are fully subject to the reforms that took effect in 2004 and 2005.

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<sup>35</sup> DWC made a statement that “The RAND methodology used only quarters of earnings where the reported earnings of the injured workers were greater than zero.” According to Robert Reville, principal author of the RAND study, all quarters in the three years after date of injury were used in the RAND calculation of wage loss.

## SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

### *DWC Uncompensated Wage-Loss Study*

The third report adds two more steps. It calculates the uncompensated wage losses under the 1997 rating schedule, and it compares average final ratings under the 2005 rating schedule to average final ratings under the 1997 schedule.

The DWC calculation finds a smaller change in average ratings than the CHSWC studies. The differences may be related to differences in sample selection criteria and weighting the sample. CHSWC finds approximately 40 percent reduction in average ratings based on 30,537 reports rated under the 2005 PDRS through January 17, 2007, and weighted in an effort to normalize the distribution of maturity. DWC finds approximately a 30 percent reduction in average ratings based on 3,311 cases with dates of injury prior to October 1, 2003. That cut-off date reflects an effort to select for a representative distribution of maturity without re-weighting, but it imposes other limitations on the comparison.

The calculation of uncompensated wage loss for workers injured in 2002 is shown in the table on page 5 of the DWC report. The average total wage loss over a three-year period (column 7) is determined for each type of injury by subtracting the average actual earnings over that period (column 3) from the expected earnings (column 2). The average PD benefits (column 4) and temporary disability (TD) benefits (column 5) are subtracted from the wage loss to arrive at the uncompensated wage loss (column 8). As discussed in the report, TD compensation rates have increased since 2002. This could allow PD compensation to be reduced without changing the net amount of uncompensated wage loss, because compensation is shifted from PD to TD.

### **Anticipated Changes, Interactions of Statutes and Regulations**

At the time of this writing (August, 2008), the Administrative Director of the DWC has proposed a revised schedule. As described above, the PDRS uses multipliers to convert AMA *Guides* impairment ratings into permanent partial disability ratings, with different multipliers assigned for different parts of the body. The proposed revision of the PDRS would re-rank the several types of injury so that the types with greater wage losses in relation to their AMA impairment ratings would be assigned to higher multipliers, while the types with smaller wage losses in relation to their AMA impairment ratings would be assigned to lower multipliers. The proposed schedule would also increase average ratings by increasing those multipliers from the existing range of 1.1 to 1.4 to a new range of 1.2 to 1.5. The proposed schedule would also change the age adjustments to better reflect how age affects earnings losses as shown by empirical research. The overall cost impact of the proposed schedule would be an increase of about 16 percent over the average value of PD ratings under the existing schedule.

Debate over the proposed PDRS is often focused on whether the multipliers are high enough to reach an acceptable level of adequacy of compensation. Changing the multipliers to generate higher ratings would mitigate the largest share of the PD reductions shown in the previous pie chart, Permanent Disability Reductions per SB 899 and 2005 PDRS. Changing the multipliers may not be the whole answer, however. Statutes prescribe the weekly amount of PD benefits and the number of weeks of PD benefits for each percentage point of a rating. The amount of the award does not simply increase in an arithmetic proportion to the PD rating. Instead, Labor Code Section 4658 prescribes 3 weeks of payments for each percent of disability within the range of 0.25 to 9.75 percent, 4 weeks for each percent within the range of 10 to 14.75 percent, 5 weeks for each percent within the range of 15 to 24.75 percent, and so forth up to 8 weeks for each percent within the range of 50 to 69.75 percent. Examples in the following table illustrate how the award can more than double when the rating is doubled.

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**Table: Select Examples of Permanent Disability Ratings and Awards**

PD Rating	Weeks of Payments	Dollar Value at \$230/wk <sup>36</sup>
8%	24 weeks	\$5,520.00
16%	55.5 weeks	\$12,765.00
32%	145 weeks	\$33,350.00
64%	383.25 weeks	\$88,147.50

When ratings reach 70 percent or more, the number of weeks jumps to 16 weeks for each additional percent, the weekly rate changes to \$270 for the entire award, and the employee is entitled to a life pension after completing the weekly award. The life pension ranges from \$77.31 per week for a 70 percent PD rating to \$301.50 per week for a 99 percent PD rating, and the life pension is increased annually for inflation. Another 8 percent added to a rating at this level is worth far more than the first 8 percent.

**Table: Example of Award for Permanent Disability Rating of 70 Percent or More**

PD Rating	Weeks of Payments	Dollar Value at \$270/wk <sup>37</sup>
72%	461.25 weeks	\$125,617.50

Political expedience has driven this geometric relationship between ratings and awards. Most ratings are low, fewer are mid-range, and very few are very high. Therefore, it has been possible to enact seemingly generous but affordable increases in benefits by loading the increases onto the top end of the ratings. At one time, the PD benefit was a simple 4 weeks of benefits for every percent of PD rating. In 1992, the non-linear scale allowed 3 weeks for each percent below 10 percent, 4 weeks for each percent at least 10 percent but less than 20 percent, and so forth up to 8 weeks for each percent at least 70 percent but less than 100 percent. As noted, that top reached 16 weeks in a politically driven amendment that single-handedly cut 16 percent of PD dollars. There has never been any evidence that the wage losses for workers with higher ratings follow the geometric curve of the awards. On the contrary, when the first empirical research was published by RAND in 2005, it showed a more nearly straight-line relationship between ratings and wage losses under the former PDRS. The disproportion between ratings and awards has been bad and it has gotten worse in the reforms. Now it constricts the options for achieving benefit adequacy through the PDRS. Because of this relationship between PD ratings and PD awards, using higher multipliers to increase average ratings would sharply increase the few awards at the top end while delivering much smaller increases to the great majority of workers in the middle or lower end. The average benefit might be increased to some target level simply by changing the multipliers in the PDRS, but that solution would not target the benefits to the average worker who needs them.

CHSWC recommends a temporary administrative revision of the PDRS in an effort to move toward a level of benefits that meets the public policy goals of the workers' compensation system. CHSWC recommends that a legislative approach be developed to make permanent disability compensation proportional to wage loss uniformly across all types of injury and across all levels of severity, based on empirical evidence and within the constraints of clearly articulated public policy decisions. Throughout these decisions, proportionality and uniformity should be evaluated on an aggregate basis so as to minimize the controversies and the inappropriate incentives that arise from individualized wage loss determinations. It should be remembered that three-year wage losses are feasible for studies and are useful indicators of longer-term losses, but the actual dollar losses may continue indefinitely. The

<sup>36</sup> Maximum rate for injury in 2006 or later, ignoring the 15 percent increase or decrease incentive for RTW offers. Labor Code Section 4453.

<sup>37</sup> Maximum rate for injury in 2006 or later, ignoring the incentive for RTW offers. In addition, after the 461.25 weeks for the 72 percent PD award, the employee is entitled to a life pension of \$92.77 per week.



## SPECIAL REPORT: PERMANENT DISABILITY RATING SCHEDULE

challenge is to formulate a public policy goal that adequately compensates those losses in a way that meets the needs of California employers and workers.

### **Further Research, Open Questions**

The full impacts of the 2005 reforms will not be precisely known for years. CHSWC recommends continuing research to elucidate the effect of changes already enacted and to inform the discussion of future changes.

Permanent disability ratings are based on impairment ratings under the 5th edition of the *AMA Guides to the Evaluation of Permanent Impairment*, according to Labor Code Section 4660 (as amended by Senate Bill (SB) 899 in 2004). The AMA has subsequently published a 6th edition. Opinions differ on whether the new edition would be a better basis for disability ratings. CHSWC recommends evaluating the 6th edition of the *AMA Guides to the Evaluation of Permanent Impairment* as a potential replacement for the 5th edition in the disability rating process.

Broad measurements of changes in benefits do not reveal all the impacts on employers and workers. The price of insurance for insured employers has not fallen by as much as benefits have dropped, perhaps due in part to uncertainty whether the savings are really as great as they appear and whether the reforms will remain substantially intact. Improvements in RTW rates and increases in TD compensation rates may be improving the economic consequences of industrial injuries for some workers, although injuries can still bring economic ruin to others. Three-year wage losses have been shown to be useful predictors of longer-term wage losses. Three years is a feasible period for observational study, but the actual dollar losses may continue indefinitely for some partially disabled workers. Measurements of three-year wage loss do not distinguish the TD phase, during which benefits replace two-thirds of lost income, from the PD phase, during which the benchmark level of compensation is undefined. The public policy goal – how much compensation should be paid for permanent partial disability – remains undefined, and the data remain incomplete.

## **SPECIAL REPORT: FRAUD STUDIES**

Recent and ongoing fraud studies are described in the “Community Concerns” section on Fraud. The major findings of the fraud studies that have been completed are summarized here.

### **Introduction**

The California Bureau of State Audits (BSA) evaluated the “effectiveness of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, the Department of Industrial Relations and local law enforcement agencies in identifying, investigating, and prosecuting workers’ compensation fraud and employers’ willful failure to provide workers’ compensation benefits for their employees.”

The audit report “Workers’ Compensation Fraud: Detection and Prevention Efforts Are Poorly Planned and Lack Accountability”, 2002-18, April 2004,” included the following recommendations on measuring fraud:

“To better determine the assessment to levy against employers each year for use in reducing fraud in the workers’ compensation system, the fraud commission and the insurance commissioner should direct the fraud division to measure the nature and extent of fraud in the workers’ compensation system.

To establish benchmarks to gauge the effectiveness of future anti-fraud activities, these measures should include analyses of available data from insurers and state departments engaged in employment-related activities, such as Industrial Relations and the Employment Development Department.

In addition, the insurance commissioner should consider reactivating an advisory committee comprising stakeholders focused on reducing fraud in the workers’ compensation system to contribute to the data analyses, provide input about the effects of fraud, and suggest priorities for reducing it. This advisory committee should meet regularly and in an open forum to increase public awareness and the accountability of the process.”

The Fraud Assessment Commission (FAC) and the Commission on Health and Safety and Workers’ Compensation (CHSWC) have continued their ongoing collaboration against fraud and have engaged in several studies and activities to carry out these recommendations.

These studies establish some baselines for additional studies in the future and serve as the starting point for implementing anti-fraud program improvements and monitoring their effectiveness and success.

This report summarizes key findings and recommendations from these studies. Two were in collaboration with the Department of Insurance (CDI) and the others were conducted by CHSWC staff and contractors. Some of these studies were completed in 2006 and 2007, but are still very relevant in the discussion of fraud and proposed policy improvements. Links to the study reports are provided in the “Further Information” section at the end of this discussion. Other studies not yet completed are discussed in the Projects and Studies section of this Annual Report.

### **Insurance Commissioner’s Advisory Task Force on Insurance Fraud**

#### ***Background***

The Insurance Commissioner’s Advisory Task Force on Insurance Fraud was convened on May 31, 2007, at the invitation of Insurance Commissioner Steve Poizner. The Task Force was to work for one year and deliver recommendations to Insurance Commissioner Poizner on ways to reduce or eliminate insurance

## SPECIAL REPORT: FRAUD STUDIES

fraud. The Executive Officer of CHSWC chaired the Workers' Compensation Expert Working Group of the Task Force.

The goals of the Task Force were to:

- Review the efficiency of the CDI Fraud Division.
- Review anti-fraud programs and efforts by the insurance industry and provide recommendations for improvement.
- Review statutes and regulations and make recommendations for improvement.
- Review and identify emerging technology for CDI which can be used to reduce the incidence of insurance fraud and can be used in the investigatory process.
- Review outreach efforts by CDI and make recommendations for improvement.

The Task Force report "Reducing Insurance Fraud in California" was issued in May 2008.

*Further Information.....*

<http://www.insurance.ca.gov/0300-fraud/upload/FraudTaskReport05-08.pdf>

### **Workers' Compensation Medical Payment Accuracy Study**

#### ***Background***

CDI contracted with Navigant Consulting for the "Workers' Compensation Medical Payment Accuracy Study." CHSWC staff provided administrative and technical assistance to this study. A draft report was produced in May 2008.

The purpose of the Workers' Compensation Payment Accuracy Study was to:

- Determine the extent of workers' compensation medical overpayments and underpayments to justify and provide information on appropriate allocation of resources to detect and evaluate suspected medical provider fraud in California.
- Provide recommendations for ongoing detection and monitoring of suspected abuse and fraud in the workers' compensation system.
- Identify potential vulnerabilities and suspected perpetrators of fraud.

As part of the study, the researchers conducted the following three reviews of injured workers' medical bills in the sample:

- Examination of medical documentation to test whether it supported the services and amounts billed by the provider and paid by the insurer.
- Survey of injured workers to give them the opportunity to verify or deny that they received the medical services billed by the provider.
- Examination of the processing of the bill to test whether the bill submitted by the provider was paid correctly and according to policy.

## SPECIAL REPORT: FRAUD STUDIES

### ***Findings***

- 21.9 percent of the sample dollars were paid in error (combined three reviews analysis).
- 27.4 percent of the sample dollars were paid in error (medical review only analysis).
- 4.5 percent of the sample dollars were paid in error (electronic processing only analysis).

Based on these sample error rate results, it is estimated that:

- Total potential payment errors in the entire California workers' compensation system range from \$494 million to \$1,372 million (combined three reviews analysis).
- Total potential payment errors in the entire California workers' compensation system range from \$822 million to \$1,513 million (medical review only analysis).
- Total potential payment errors in the entire California workers' compensation system range from \$122 million to \$261 million (electronic processing analysis only).

### ***Recommendations***

The selected recommendations below include ways to address a variety of causes of payment errors identified in this study as well as ways to more directly identify potential fraud:

- Increase education efforts for providers and insurers about appropriate courses of care per American College of Environmental Medicine (ACOEM) *Guidelines* for the highest-volume types of injuries.
- Data mine the new medical bill database in the Workers' Compensation Information System (WCIS) using a range of relevant analytic and pattern-recognition techniques, including advanced techniques such as artificial intelligence, to identify aberrant patterns and trends in workers' compensation medical billing fraud on a systemwide basis, and focus investigative efforts.
- Consider expanding statutory authority for access by CDI to WCIS.
- Develop a medical benefits administration "best practices" checklist for employers to use in evaluating efforts by their workers' compensation insurers or third-party administrators in ensuring medical payment accuracy and preventing and detecting fraud.

### ***Recommendations for Next Steps***

To build upon this study and evaluate the feasibility of implementing the above recommendations, the following next steps are recommended:

- Begin analyzing the medical bill data in WCIS.
- Conduct a follow-up payment accuracy study in 2010 using the WCIS medical bill database to determine if implementation of any of the recommendations above or others have had an effect on payment accuracy levels.

## SPECIAL REPORT: FRAUD STUDIES

### **Study of Fraud in Workers' Compensation Payroll Reporting**

#### ***Background***

The workers' compensation premium paid by employers is based on the employers' payroll. By misreporting payroll costs, employers avoid the higher premiums they would incur with full reporting of payroll. Employers can also misreport total payroll or workers in high-risk, high-premium classes as earning wages in lower-risk lower-premium occupations.

It has long been suspected that a fraction of employers fraudulently under-report and misreport payroll for calculation of workers' compensation premium or illegally forego purchasing workers' compensation insurance altogether. In 1998, CHSWC contracted with the University of California (UC), Berkeley to develop a pilot project and analyze the degree to which employers fail to secure coverage.

The present study extends that prior study to include the impact of fraudulent under-reporting and misreporting of payroll by insurers to calculate premiums. During the period studied for this report, 1997-2002, premium rates for California were initially low and then increased rapidly. Subsequent to the study period, rates continued to increase through 2004 and then dropped to near earlier levels. This study examines the extent of fraudulent reporting and the impact of the rapid increase in premium rates on employer fraudulent behavior.

The report "Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? What is the Impact on Honest Employers?" was published in August 2007.

#### ***Findings***

- The study found substantial misreporting of payroll in jobs where the employer pays high workers' compensation premium rates.
- The under-reporting becomes increasingly more severe as the cost of workers' compensation increases.
- During the study period of 1997 to 2002, the level of underreporting increased from between 6-10 percent of private industry payroll when premium levels were low (\$2.47/\$100 payroll) to 19-23 percent when premium levels were high (\$4.28/\$100 payroll).
- This translates to a change from \$19.5 to \$31.3 billion in 1997 to as much as \$100 billion in under-reported payroll in 2002.
- Under-reporting and misreporting increase dramatically as the premium rate for a class of workers increases. For very high-risk classes, as much as 65 percent to 75 percent of payroll is being under-reported or misreported.

Insurers are required to audit policyholders if the premium exceeds a threshold, currently \$10,000. The Workers' Compensation Insurance Rating Bureau (WCIRB) has a program of evaluating insurer audits, trying to ensure both employer and insurer compliance. The Test Audit Program involves re-auditing approximately 3,000 of the 600,000 policies issued by insurers in California each year. WCIRB results are compared to those reported by insurers, and discrepancies can result in fines, increased audits and other penalties.

#### ***Recommendations***

The report included the following recommendations:

## SPECIAL REPORT: FRAUD STUDIES

- The Legislature, CDI, Department of Industrial Relations (DIR)/Division of Labor Standards and Enforcement (DLSE) could push for more aggressive enforcement against under-reporting and misreporting. This could include:
  - Focusing more FAC funding on premium fraud;
  - Raising the civil penalties for premium fraud; and/or
  - Raising the criminal penalties for premium fraud.
- The Test Audit Program that monitors insurer audits of policyholders is currently operated by WCIRB, an insurance industry association. CDI might consider having this process conducted by a separate, private contractor.
- Employers report payroll data to the Employment Development Department (EDD) for tax withholding and unemployment and disability insurance. These records could be matched to employers' reporting to insurers for premium purposes. Currently, this avenue is limited by restrictions on insurer access to EDD data. Legislation could simplify this basic audit procedure.
- The Franchise Tax Board receives large amounts of information that could be used to identify fraudulent under-reporting. These data include income information from both employers and workers that could be used to identify fraudulent use of independent contractor status. Access to these data is heavily restricted, and legislation might be needed to facilitate access for investigators.
- Professional Employer Organizations (PEOs) have been cited as a frequent avenue for employers to avoid the consequences of high experience modification rating (Ex-Mods) or to disguise the risky nature of workers' occupations. However, to date, there has been no systematic study of the size or scope of the PEO market or the claims experience of PEOs. The State could undertake a study to gauge the impact of PEOs in the workers' compensation market.
- Recently, at least one very large national insurer was fined for systematically under-reporting premium in several states (Bloomberg News, 5/26/07). It is unclear whether the under-reporting extended to payroll and occurred in California. If this under-reporting extended to California, then the estimates of under-reporting could include fraudulent behavior by at least one insurer, not just employers. This could be a topic for study by CHSWC and CDI.
- If one or more insurers under-reported payroll and premium, there is a possibility that this action could have affected individual employers' Ex-Mods. In the aggregate, insurer under-reporting could also have altered pure premium rates set by WCIRB and CDI. This could be a topic for study by CHSWC and CDI.

### **Study of "Split" Class Codes in Fraudulent Payroll Reporting**

#### ***Background***

Within the construction industry, union employers typically paid substantially higher wages under collective bargaining agreements than were paid by non-union contractors. Hence, for the same number of hours worked, a union employer paid more in workers' compensation premiums, even though the workers were not exposed to any greater period of occupational risk.

The construction industry and building trades unions requested that WCIRB use split class codes for the construction industry based on the hourly wage paid to the worker. Splitting class codes has resulted in substantially different premium rates for similar work but different underlying wage rates. The low-wage classes have higher premium rates, often more than double the rates for the high-wage classes. The

## SPECIAL REPORT: FRAUD STUDIES

difference in premium rates means that low-wage employers could misreport payroll by shifting it from low-wage classes to high-wage classes.

CHSWC contracted with UC Berkeley to study this issue, and the report “Split” Class Codes: Evidence of Fraudulent Payroll Reporting” was issued in August 2007.

### ***Findings***

The study found evidence of abuse and presents evidence that payroll for low-wage workers is:

- Being systematically under-reported in the low-wage class codes.
- Some of that payroll may be misreported, shifted from the low-wage classes to the high-wage classes to avoid the higher premium rates in the low-wage classes.

The study found that:

- 25 percent to 30 percent of low-wage payroll is being under-reported or misreported.
- Reported payroll is about 10 percent higher than actual payroll and 14 to 18 percent higher than expected reporting for premium purposes.

## **Study on Access to Workers’ Compensation Insurance Coverage Information**

### ***Background***

In response to a request from the Legislature, CHSWC prepared an issue paper regarding public access to workers’ compensation insurance coverage information or proof of coverage (POC). The staff report “Workers’ Compensation Compliance and Proof of Coverage” was issued in 2006.

### ***Findings***

The following summarizes some of the advantages of improved public access:

- Employers are protected from broker fraud because they may verify that they are covered for workers’ compensation.
- The public is protected from engaging contractors or subcontractors, who may not be covered, or who may have let coverage lapse, by allowing coverage verification by date, and employers can reduce their risk with immediate verification.
- Administrators save time and money spent collecting POC information. Two major workers’ compensation constituencies, medical providers and lawyers, can more efficiently serve injured workers with immediate verification of coverage.
- Parties to a claim before the Division of Workers’ Compensation (DWC) can more easily save time and money preparing claims, the more POC data are available electronically.
- Workers are protected from lack of workers’ compensation coverage; employees and/or their representatives may verify that an employer is covered for workers’ compensation above and beyond the law.

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- Insurers may ascertain if another insurance company could potentially share the liability in certain claims.
- Health and medical providers may determine the appropriate insurance carrier to bill.
- Insured employers are placed at a competitive disadvantage with respect to uninsured employers. This levels the economic playing field for insured employers by identifying illegally uninsured employers and bringing them into compliance.
- Insured employers are protected from being doubly disadvantaged when taxes or premiums are raised to cover costs shifted to other government or employer-supported services.
- Taxpayer money is saved by reducing the need for injured workers to use other social and benefit systems because the employer was illegally uninsured.
- The State of California and WCIRB (the rating bureau for California) would save time and money on resources spent handling inquiries and requests for data via forms, letters and phone calls. While the State does not directly provide such information, it would still save additional resources spent on handling misdirected inquiries and requests.
- The State could identify illegally uninsured employers more easily, which could reduce the Uninsured Employers Benefits Trust Fund (UEBTF) payout of over \$20 million each year.
- A study by CHSWC in 1998 reported that recoveries and penalties from uninsured employers averaged only \$2.3 million per year, while payment of claims on behalf of uninsured employers resulted in a net loss to the State's General Fund of over \$100 million during the five-year period. (As of 2004, losses previously incurred by the General Fund are now incurred by the Workers' Compensation Administrative Revolving Fund (WCARF) and are now funded by a surcharge on all insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.) A \$20 million gap per year appears to continue up through 2005.
- Better access to POC should change the behavior of some employers who believe the risks of going without coverage are worth the savings until, or if, they are ever identified; it is an added deterrent.
- CHSWC conducted three pilot projects regarding illegally uninsured employers. The report entitled "CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them into Compliance" describing these projects in detail is available at <http://www.dir.ca.gov/CHSWC/uefcover.html>. The rate of uninsured employers in California was found to be approximately 9 percent in 1998. A program to identify uninsured employers more consistently would create significant savings.
- The number of new cases received by UEBTF increased by 45 percent between fiscal year (FY) 01/02 and FY 04/05. Between those years, the number of cases increased 25 percent between FY 01/02 with 1,001 cases and FY 03/04 with 1,251 cases.
- Most recent data show a 16 percent increase from 1,251 cases in FY 03/04 to 1,451 cases in FY 04/05. These increases suggest that without better use of coverage data for compliance purposes, demands on the fund may increase.



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### **Recommendations**

#### *Recommendations for Enforcement*

- WCIRB to adopt what many other states are doing by providing daily POC database downloads so that the State may carry out its mandate to enforce employer compliance by conducting a program of matching EDD records with WCIRB records.
- EDD to provide monthly database downloads of employer-identification data, including federal employer identification numbers (FEINs) and names and addresses, so that the State may carry out its mandate to enforce employer compliance by conducting a program of matching EDD records with WCIRB records.
- Fund DLSE to create and conduct an ongoing data-matching program to identify uninsured employers, to contact uninsured employers, to assess penalties, and to bring the uninsured into compliance. Such a program may be funded by fines once started, with most of the penalties returned to the UEBTF fund. Such a program should create periodic reports on results, including fines levied, to CDI.<sup>38</sup>

#### *Recommendations for Public Access*

- Determine the desirability and legality, in particular given the referenced case law with respect to the confidential and proprietary nature of policy effective dates, of making POC data available to the public in California, regardless of whether someone is a party to a claim.<sup>39</sup>
- Determine whether WCIRB should be mandated to provide public access of POC information via the Internet, or whether WCIRB will deem the service valuable enough to WCIRB members and the related workers' compensation community to host it on its own.<sup>40,41</sup>
- Determine how such public access will be funded. Given the planned WCIRB upgrades mentioned in this paper, the costs of hosting an online public access database may be recoverable, especially when manual paper requests currently require \$8 administrative fees to cover overhead (\$8 x 38,000 requests equals \$304,000). Public access may reduce many of these paper requests and lower costs.<sup>42</sup>

### **Study of Workers' Compensation Injury Reporting**

#### **Background**

Electronic reporting of injuries and illnesses to the California's WCIS became mandatory in 2000. Since then, claim administrators have been required to submit electronic data about all workers' compensation claims, including information about the injured worker, the injury, and benefit payments. In principle, WCIS should have information on every compensable injury occurring at a covered employer.

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<sup>38</sup> This recommendation became Senate Bill (SB) 869 (Ridley-Thomas) and was made law in 2007. It is statutorily in effect as of January 1, 2008, as part of Labor Code Section 90.3.

<sup>39</sup> This recommendation is similar to Assembly Bill (AB) 507 (de La Torre) which was vetoed by the Governor on scope issues in 2008.

<sup>40</sup> Ibid.

<sup>41</sup> As of 2008, 29 other state governments host a public internet workers' compensation coverage look-up website.

<sup>42</sup> Ibid. AB 507, as all legislation, considered costs.

## SPECIAL REPORT: FRAUD STUDIES

Still, eligible workplace injuries may go unreported. For example, WCIS may not receive injury reports because injured workers or their physicians have not reported injuries to their employers. Even if a report is made, the employer or insurer may not consider the injury to be compensable and reject the claim.

Alternatively, a claim may be filed and paid, but the employer, insurer, or third-party administrator may neglect to report the claim information to WCIS.

Barriers to reporting can occur for different reasons and are described in the report. A substantial disparity between the number of injuries that are reported and the actual number that occur has several implications. First, if policymakers think that the number of workplace injuries and illnesses is smaller than it actually is, they may devote fewer resources to prevention. Second, reporting may be particularly incomplete for specific conditions, groups of workers, and employer types. As a consequence, we may pay less attention to safety for those conditions, workers, and employers for which under-reporting is the greatest. In addition, when compensable work-related injuries and illnesses are not filed as workers' compensation cases, benefits go unpaid, and the costs of these injuries may be shifted to workers and their families, to private health insurance, and to government disability and health insurance programs.

This study addresses the reporting of lost-time injuries to WCIS for injuries occurring during two time periods: January 1, 2003-December 31, 2003, and July 1, 2004-June 30, 2005. These periods are just before and just after the 2004 workers' compensation reform legislation. Researchers chose these time periods to see if they could find a substantial change in reporting that might have been influenced by the 2004 legislation. The study also compares reporting in the California workers' compensation system with that in six other states: Minnesota, New Mexico, Oregon, Washington, Wisconsin and West Virginia.

CHSWC contracted with Boston University to conduct this injury reporting study, using a large sample of WCIS data and Bureau of Labor Statistics (BLS) data and applying a capture-recapture analysis methodology. The report entitled "Reporting of Workers' Compensation Injuries in California: How Many are Missed?" and was approved in 2008.

### ***Findings***

- The most conservative estimate of reporting of workplace injuries in California suggests that 21 percent to 25 percent of lost-time injuries go unreported to WCIS. A less conservative estimate of underreporting implies that 40 percent of lost-time injuries went unreported.
- Reasonable alternate scenarios allow for the likelihood that reporting an injury to BLS increases the likelihood that it will be reported to WCIS. Under these circumstances, researchers estimate that only about two-thirds of injuries are reported to WCIS. This incomplete reporting places California in the middle of the seven states researchers studied.
- There appears to have been an increase in reporting from injuries occurring in 2003 to injuries between July 2004 and June 2005. This suggests that the 2004 reforms probably did not lead to a decline in the reporting of injuries to WCIS. Researchers do not know whether this increase is a random fluctuation or a stable change.

From a policy perspective, benefit payment is at least as important as injury reporting. Researchers do not know how many workers receive benefits for injuries that go unreported to WCIS. It seems likely that benefits have been paid but not reported in many cases, but evidence about this is inadequate to support an estimate.

- Unreported injuries may be eligible for workers' compensation benefits but receive none. In this case, the unpaid workers' compensation benefits pose a burden to the injured workers and their families, health insurance programs, and public and private disability programs.

## SPECIAL REPORT: FRAUD STUDIES

### **Recommendations**

- CHSWC, DWC, California Department of Public Health (CDPH), DLSR, and Cal/OSHA should convene an interagency underreporting task force to develop a plan for improving WCIS reporting. This would include identifying late reporting, but also identifying employers, insurers, and third-party administrators that do not report compensated injuries. This task force could include not only knowledgeable people from these agencies, but also people involved in other relevant activities, like California's reporting to the BLS survey and planning for the California Trauma Registry.

### *Specific recommendations include:*

- DWC could strengthen its efforts to identify problem areas in reporting of compensated injuries. This would include identifying late reporting, but also identifying employers, insurers, and third-party administrators that do not report compensated injuries. In doing so, DWC may identify problems in the way reporting systems work, in addition to identifying noncompliance with reporting requirements.
- DWC and Cal/OSHA could consider collaborating to identify employers who under-report injuries. Employers who engage in substantial underreporting to either system could be given substantial penalties, and the program and penalties could be publicized. DWC could also consider penalties for late reporting to WCIS. If current laws and regulations are inadequate to support such a program, this could be addressed.
- DWC could begin an inquiry into the 40-50 percent of reported claims that lack information about benefit payments. DWC could draw a random sample of such cases with dates of injury at least 3 years in the past from a subset of claims administrators for insurers, third-party administrators, and self-insured employers. Initially the claims administrators might be chosen because they have a relatively high proportion of cases lacking benefit reports. DWC could submit the sample to the trading partners and request up-to-date information on benefit payments and claim status. From this information and discussions with trading partners, DWC may be able to diagnose systematic problems and fashion solutions.
- California collects data on hospital and emergency room discharges and from ambulatory surgery clinics through MIRCAL. DIR might explore whether these data could be used to look for unreported workplace injuries and illnesses. The data contain diagnosis and social security number of the patient and identify the expected source of payment. They do not identify the employer. If WCIS data included state EDD account numbers (EANs), cross-matching with EDD wage files to determine the employer would be easier and more accurate than otherwise. It is not known if there are any legal issues precluding this use of Medical Information Reporting for California (MIRCal) data.
- CHSWC could explore linking other state occupational safety and health information systems with WCIS data to determine whether injuries and illnesses have been reported and compensated where appropriate.
- DIR could explore automating the doctor's first report of occupational injury or illness and requiring all doctors' first reports to be electronically transmitted. For example, reports could be filled out on the Internet and automatically transmitted to DIR. These reports could be compared with WCIS files to determine where underreporting occurs.
- DWC may want to consider rejecting reports of injury with invalid or incorrect EINs. These numbers can be valuable for potential uses of WCIS, including but not limited to the underreporting issue.

## SPECIAL REPORT: FRAUD STUDIES

- DWC should consider adding the state EAN as a required field in the First Report of Injury. This would allow easier and more accurate linkage with EDD wage files and other state data collected from employers.
- California has recently added workers' compensation questions to the states' Behavioral Risk Factor Surveillance System (BRFSS) survey. This could be used as another way of getting a handle on the extent of workers' compensation underreporting. Over time, it could be used to determine whether reporting is improving.

### *Further Information.....*

All CHSWC reports concerning fraud may be viewed in their entirety at  
<http://www.dir.ca.gov/chswc/FraudPage1.html>

"Reducing Workers' Compensation Fraud in California," May 2008 Report of the Insurance Commissioner's Advisory Task Force on Insurance Fraud.  
<http://www.insurance.ca.gov/0300-fraud/upload/FraudTaskReport05-08.pdf>

Information and descriptions of ongoing CHSWC anti-fraud activities are contained in CHSWC Annual Reports.  
<http://www.dir.ca.gov/chswc/AnnualReportpage1.html>

"Workers' Compensation Fraud: Detection and Prevention Efforts Are Poorly Planned and Lack Accountability," California State Auditor Report 2002-018, April 2004.  
<http://www.bsa.ca.gov/pdfs/reports/2002-018.pdf>

"Reporting of Workers' Compensation Injuries in California: How Many are Missed?"  
[http://www.dir.ca.gov/chswc/Reports/CHSWCcap-recapreport\\_061708.pdf](http://www.dir.ca.gov/chswc/Reports/CHSWCcap-recapreport_061708.pdf)

## **SPECIAL REPORT: UNINSURED EMPLOYERS BENEFITS TRUST FUND (UEBTF)**

### **Introduction**

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710 through 3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

The workers' compensation community has expressed concern with several aspects of UEBTF. In response, the Commission on Health and Safety and Workers' Compensation (CHSWC) requested that CHSWC staff address some of the emerging issues regarding UEBTF including:

- UEBTF access by injured workers.
- Contributions to UEBTF by self-insured and insured employers.

### **History of the Uninsured Employer Fund**

In 1971, the Legislature created an Uninsured Employers Fund (UEF) with an initial appropriation of \$50,000 to pay workers' compensation awards to injured workers when their employer has failed to secure the payment of compensation and does not pay the award or furnish a bond within 10 days after the award is made.

The initial amount appropriated to UEF was based on the testimony of a representative of the Division of Industrial Accidents that the fund would be self-sustaining. It was expected that the State would be able to recover sufficient monies from illegally uninsured employers. Unfortunately, this conclusion was based on the experience in Ohio, which, unlike California, had a monopoly State Fund.

In August 1973, the California Workers' Compensation *Reporter* reported that the UEF did not have adequate funds to pay the established claims against it. The Legislature subsequently appropriated funds to pay the claims. In 1991, it was provided that penalties assessed against uninsured employers would be deposited in the Fund. In April of 1992, however, the Fund was again exhausted and again replenished by an urgency appropriation on June 22nd. In 1997, Coopers & Lybrand was contracted to prepare a report reviewing the UEF claims management program. Recommendations to reduce payouts, augment training, supervision and staffing, and improve documentation were made, many of which were implemented to the benefit of the UEF program.

A study by CHSWC in 1998 reported that recoveries and penalties from uninsured employers averaged only \$2.3 million per year, while payment of claims on behalf of uninsured employers resulted in a net loss to the State's General Fund of over \$100 million during the five-year period.

In 2003, the name of the Fund was changed to the Uninsured Employers Benefits Trust Fund (UEBTF). As of 2004, Fund losses previously incurred by the General Fund are now incurred by UEBTF and are now funded by an assessment from all insured employers and self-insured employers, by penalties to non-compliant employers, and by recoveries from uninsured employers for actual worker injuries.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

### Administration of the UEBTF Program

The UEBTF is administered by the director of the Department of Industrial Relations (DIR). Claims are adjusted for the DIR director by the Special Funds Unit in the Division of Workers' Compensation (DWC). UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the director of the DIR represented by the Office of the Director of the Legal Unit.

Over the years, the DIR director has been successful in obtaining legislation to ease the burden on DIR legal staff (OD-Legal). For example, Labor Code Section 3714 was amended to provide that cases involving the Fund may only be heard by the Workers' Compensation Appeals Board (WCAB) of San Francisco, Los Angeles, Van Nuys, Anaheim, Sacramento, or San Diego in the absence of good cause and the consent of the director. UEBTF, moreover, cannot be joined in a proceeding unless the alleged uninsured employer has come under the jurisdiction of WCAB, either by making a general appearance or by being served with the application and a notice of lawsuit per Labor Code Section 3716.<sup>43</sup>

### Current Funding Liabilities and Collections

#### *UEBTF Funding Mechanisms*

The total program budget for UEBTF in fiscal year 2006-2007 is \$37.6 million. The projected budget for fiscal year 2007-2008 is \$42.6 million, based on the average of two fiscal year actuals. Funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when the UEBTF has paid benefits and is able to obtain reimbursement from responsible employers.

The funding for the UEBTF comes primarily from assessments on both insured and self-insured employers. According to Labor Code Section 62.5(e), the "total amount of the assessment is allocated between the employers in proportion to the payroll paid in the most recent year for which payroll information is available."<sup>44</sup>

The assessment for the insured employers is based on a percentage of the premium, while the percentage for self-insured employers is based on a percentage of indemnity paid during the most recent year. The total assessment collected for fiscal year 2006-07 was \$10,818,877, a reduction resulting from a one-time balance carryover. An explanation of the assessment and the calculations from the past two years may be found at

<http://www.dir.ca.gov/dwc/06UFund.pdf> and <http://www.dir.ca.gov/dwc/07UFund.pdf>

Apart from the assessments on employers required by Labor Code Section 62.5, UEBTF is funded by two other sources:

- Fines and penalties collected by the DIR. These include both the Division of Labor Standards and Enforcement (DLSE) penalties as well as Labor Code Section 3701.7 penalties on self-insured employers.
- Recoveries from illegally uninsured employers per Labor Code Section 3717.

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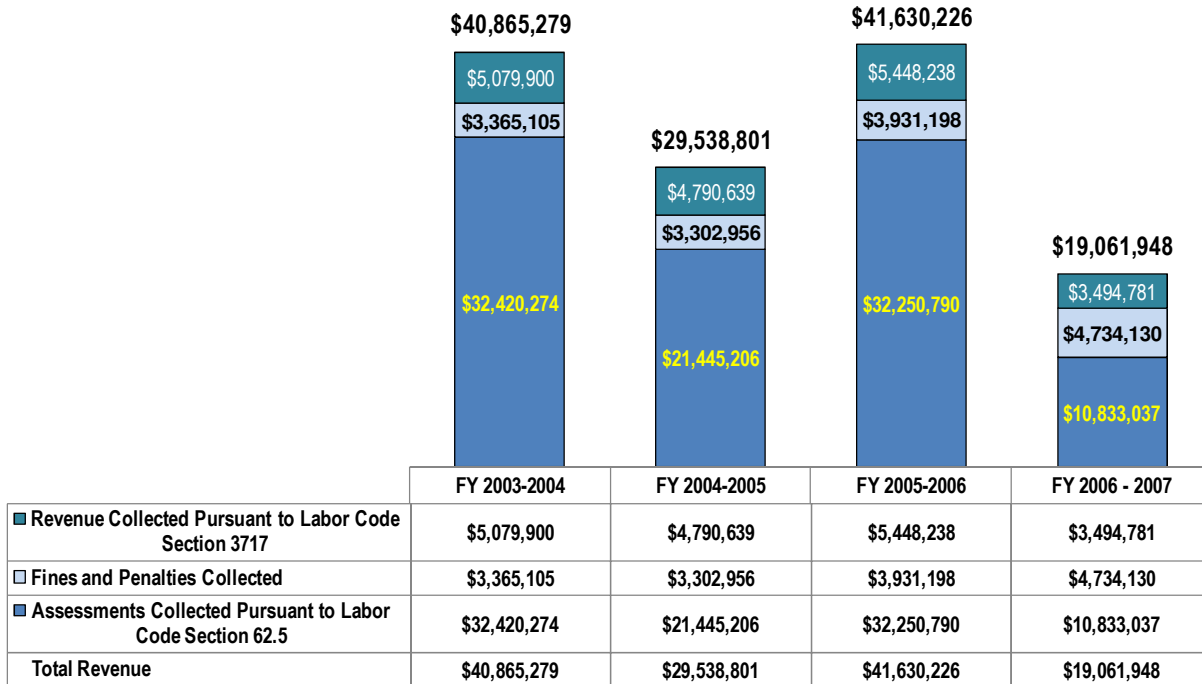
<sup>43</sup> For further information on jurisdiction, see McGinty, Steven and Anthony Mischel, "How to Properly Obtain Jurisdiction Over an Uninsured Employer in Workers' Compensation Cases," *Workers' Compensation Quarterly*, Vol. 12, No. 2, Summer 1999.

<sup>44</sup> Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

The table below shows monies collected by the source of the revenue.<sup>45</sup>

### UEBTF Revenues, FY 2003-04 to FY 2006-07



Data Source: DWC

#### *UEBTF Payment Procedures*

- If an illegally uninsured employer does not pay an award against it within 10 days or post bond to secure the payment, the injured worker can make a written demand on UEBTF for payment of the award. Detailed instructions for injured workers are provided at <http://www.dir.ca.gov/dwc/IWguides.html>.
- A valid demand on UEBTF cannot be made unless the illegally uninsured employer either appeared or was served with the application and a notice of lawsuit before the regular hearing.
- On receipt of the demand and a copy of the findings and award, UEBTF is mandated to begin payment of the award.
- To facilitate prompt delivery of benefits, the DIR director has the discretion to pay compensation and provide medical treatment before WCAB makes an award.
- UEBTF can make payments before the award issues if the injury, disability, and lack of insurance are not seriously in dispute.
- If the uninsured employer has filed for bankruptcy, the injured worker must show that he or she filed a proof of claim in the bankruptcy proceeding and requested relief from the automatic stay of proceedings issued by the bankruptcy court. [*Ortiz v. WCAB* (1992) 4 CA4th 392, 57 CCC 172.]

<sup>45</sup> The data in the chart "UEBTF Revenues" can be found at DWC/ Special Funds Unit/UEBTF website [http://www.dir.ca.gov/dwc/UEF/UEF\\_LC3716\\_1.pdf](http://www.dir.ca.gov/dwc/UEF/UEF_LC3716_1.pdf).

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

### *UEBTF Liability and Collections*

- UEBTF is not liable for any penalties or for the payment of interest on awards. (Labor Code Section 3716.2)
- UEBTF is not liable for contributions to insurance carriers or self-insured employers; it is liable in occupational disease or cumulative-injury cases only when there is no other employer with liability. UEBTF is also not liable for treatment that is the liability of Medi-Cal. [Labor Code Section 3716(c)]
- UEBTF is relieved from the obligation to pay further compensation up to the entire amount of any satisfied judgment that the injured worker obtains in a civil action against the uninsured employer. (Labor Code Section 3709.5)
- The DIR director, as the administrator of UEBTF, may institute a civil action against the employer for the collection of the award or may obtain a judgment against the employer pursuant to Section 5806. (Labor Code Section 3717)
- The DIR director may also file a certificate of lien in any county where the employer is likely to have property. The lien continues until the employer pays the award, prevails in the litigation before WCAB, or posts a bond. (Labor Code Section 3721)
- The DIR director may also enforce any judgment against an uninsured employer by non-judicial foreclosure of the judgment debtor's real property. [Labor Code Section 3716.3(a)]
- UEBTF is also authorized to bring an action against a third party that caused the injury. (Labor Code Section 3732)

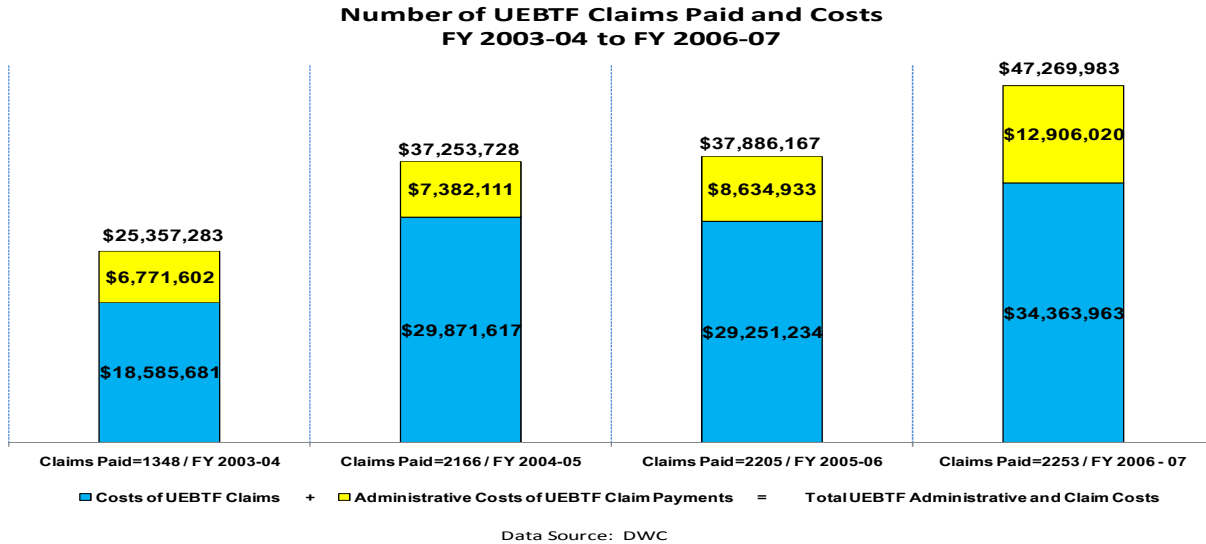
### *Costs of the Uninsured Employers Benefits Trust Fund*

Within the past three years, the number of uninsured claims paid increased 67 percent from 1,348 in fiscal year 2003-04 to 2,253 in fiscal year 2006-07. The cost of claims increased 85 percent from \$18.6 million to \$34.4 million per year over the same period. Administrative costs associated with claim payment activities have increased 90 percent from \$6.8 million to \$12.9 million per year over the same period.

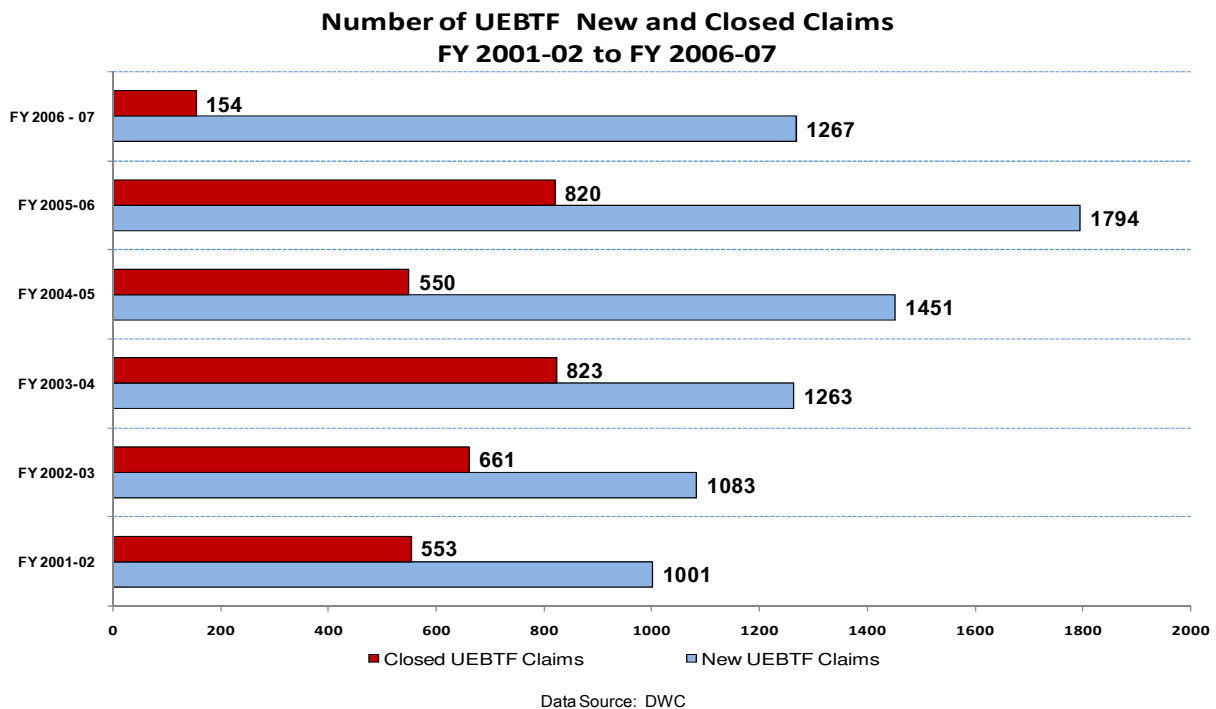


## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

Details are provided in the chart below.<sup>46</sup>



The projected UEBTF annual program cost for the most recent fiscal year 2007-08 is \$42.6 million.<sup>47</sup> This cost includes the administrative costs associated with claims-payment activities, as well as the payout on claims filed by injured workers of illegally uninsured employers. As shown in the chart below, the number of new UEBTF claims was increasing each year from fiscal year 2001-2002 to fiscal year 2005-2006. The number of new UEBTF claims in fiscal year 2006-2007 decreased to almost the same level as in fiscal year 2003-2004.

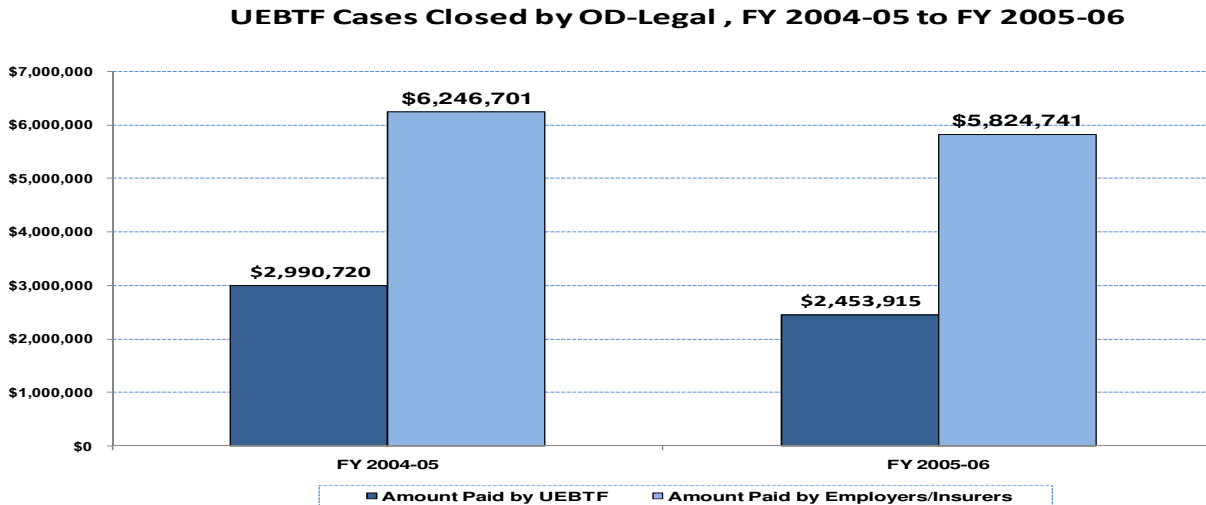


<sup>46</sup> The data in the chart "Number of UEBTF Claims Paid and Costs" can be found at DWC/ Special Funds Unit/UEBTF website [http://www.dir.ca.gov/dwc/UEF/UEF\\_LC3716\\_1.pdf](http://www.dir.ca.gov/dwc/UEF/UEF_LC3716_1.pdf).

<sup>47</sup> Division of Workers' Compensation, "Report of the Uninsured Employers Benefit Trust Fund in Compliance with Labor Code Section 3716.1(c) for Fiscal Year 2006-07 at [http://www.dir.ca.gov/dwc/UEF/UEF\\_LC3716\\_1.pdf](http://www.dir.ca.gov/dwc/UEF/UEF_LC3716_1.pdf).

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

The chart below provides data on the ratio of money paid out by employers and insurers compared to that paid out by UEBTF in claims where UEBTF was joined in a WCAB case. The chart below demonstrates that in these cases, more money is paid to injured workers from employers and insurers than from UEBTF.<sup>48</sup>



Data source: DWC

### Stakeholder Concerns

Concerns have been raised about UEBTF (still commonly called the UEF) from both employers and workers. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers, and workers are concerned about the difficulties in obtaining benefits from UEBTF.

#### *UEBTF Costs and Cost Shifting*

UEBTF costs are driven primarily by the frequency of claims, which are a result of the prevalence of uninsured employers. In the CHSWC 1998 study on Illegally Uninsured Employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured. A more recent matching of a random sample of employers by DIR shows that in 2008, approximately 15 percent of the employers are illegally uninsured for workers' compensation.<sup>49</sup> This high percentage of uninsured employers may explain why the costs to UEBTF continue to rise.

A small contribution to the cost may be the cases where a worker obtains disability benefits based on improbably high earnings claimed, and UEBTF is unable to refute the claim because the employer is unavailable or uncooperative. In some cases, substantial indemnity costs for temporary disability or vocational rehabilitation maintenance allowance may accrue before UEBTF ever gets notice of a claim.

Whatever the ultimate costs of the UEBTF program, those costs are shifted to law-abiding employers because some employers will be illegally uninsured. The costs are shifted to all insured and self-insured employers (including the State, although it is technically not "self-insured") through assessments. Any one segment of the employer population could argue that it should be exempt from sharing in this cost because it does not generate uninsured claims. Any proposal to redistribute the cost shifting should be evaluated for the impact on those who will continue to bear the burden and for compatibility with sound public policy.

<sup>48</sup> Data provided by Office of the Director legal staff (OD-Legal) on cases closed for fiscal years 2004-05 and 2005-06.

<sup>49</sup> Such matching has been statutorily required in Labor Code 90.3, but more deliberate enabling and funding mechanisms were added with Senate Bill (SB) 869 in 2007. As a result, estimates of the illegally uninsured employer population are expected to improve.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

### *Access to UEBTF*

Employee concerns with UEBTF involve the difficulty in obtaining benefits when an employer is uninsured. Representatives of injured workers have suggested that it should be possible to make a claim to UEBTF as simply as making a claim to an insurer. They complain that the additional procedural steps are complicated, difficult to understand and time-consuming and that benefits are seldom paid voluntarily prior to a WCAB award.

### *UEBTF is Not Intended to Act Like an Insurer*

There are reasons for the additional safeguards to obtaining benefits from UEBTF. First and foremost, UEBTF is not an insurer. An insurer usually knows the identity of its insured employers, an insurer pays claims which are reasonably certain without waiting for WCAB awards, and an insurer submits itself to the jurisdiction of WCAB upon notice by mail if a dispute arises. By contrast, UEBTF must ascertain that the employer is indeed uninsured before it even considers making payments. Frequently, employers do business under fictitious names that may or may not be formally recorded, and an insurance policy may be found once the correct identity of the employer is revealed. Correctly identifying the employer is vital not only to rule out the possibility of finding coverage, but also to establish civil jurisdiction over that employer to enforce any subsequent judgment.

### *Proof of Coverage Verification and Delays*

Once the employer is correctly identified, the employee must investigate whether the employer is actually insured. This requires submitting a written request to the Workers' Compensation Insurance Rating Bureau (WCIRB), which receives data on all insurance policies written for workers' compensation coverage in California. WCIRB will reply by mail, either identifying the insurer or advising that there is no record of coverage. Sometimes, this step must be repeated with additional identifying information on the employer. This delay of one to three weeks may occur even with an insured employer who is cooperative, as it is inherent in most UEBTF cases.

### *Serving Legal Documents for UEBTF by an Injured Worker or Attorney*

Once it appears that the employer is illegally uninsured, the injured worker begins the steps toward seeking benefits from UEBTF. Before UEBTF can be joined in a WCAB case, however, the injured worker usually needs to have papers personally served on the employer by a process server in the same manner as service of a civil summons. Often, injured workers do not serve the employer in the name of the correct business entity. Currently, every case that is opened by UEBTF goes over to the investigators in the Legal section of the Office of the DIR Director (OD-Legal) for investigation of the employer, and the employer is served if it has not been done correctly. The turnaround time is approximately two to three weeks. It may be necessary to repeat the coverage investigation with WCIRB after UEBTF or OD-Legal helps the worker find the correct name for the employer.

Serving the employer is routine in the civil arena, but it is unfamiliar to some workers' compensation practitioners because it is rarely necessary in routine workers' compensation cases. Once the employer is served, the administration of UEBTF benefits is still more difficult than the administration of insured benefits, for several reasons. Often, the uninsured employer is not cooperative in confirming the facts of employment, injury, or earnings.

An insurer has the contractual right to administer the claim in its discretion (to some extent), while UEBTF has no such right. For UEBTF to secure its right to recover from the employer any benefits it pays to the injured worker, UEBTF must clearly establish the employer's liability for those benefits. With few exceptions, that fact is established only by a WCAB award. Even in a case that UEBTF has no reason to contest, it must assure that the employer has notice of the intended award and an opportunity to object before it can pay a benefit to the worker.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

The service of process and formal joinder does have a very positive effect on inducing payments of claims by the parties to a claim. Employers are more willing to pay what is owed once they are shown what will happen to them in collection and penalties, as well as the problems in avoiding these liabilities once in bankruptcy. The solvent employers would rather pay one claimant (and medical provider) than two attorneys and the State. Insurers who have denied the claim because the employer was incorrectly identified by the applicant are also more willing to pay a claim once the correct policyholder is identified. Likewise, insurers who denied a claim because they canceled coverage on the correct employer should not have to agree to payment once their error is documented.

Statistics from DIR's OD-Legal (UEBTF Cases Closed chart, above) indicate that in claims where UEBTF is joined, more money is paid to injured workers by employers and insurers than by UEBTF. Generally speaking, litigators representing UEBTF report experiencing a payout ratio close to two-to-one, or better, from employers and insurers vs. UEBTF. Further, during the process of investigating and litigating claims, OD-Legal reports are often able to identify parties who are responsible and/or persuade parties to take responsibility for payment of these claims.

### Findings

CHSWC findings include:

- Identifying and locating uninsured employers along with proper enforcement would reduce the costs to stakeholders of the workers' compensation system.
- The surest way to reduce the long-term cost of UEBTF is to reduce the prevalence of illegally uninsured employers. In the CHSWC 1998 study on illegally uninsured employers, the rate of uninsured employers was found to be 9 percent of the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured.
- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers. Due to lack of resources, this program was never implemented. In 2007, Senate Bill (SB) 869 was signed into law and set forth administrative funding as well as mandatory reporting on the program's performance. The first report is due in 2009.
- There is a lack of knowledge of UEBTF and civil procedure in the workers' compensation community.
- Unrepresented applicants lack easy access to UEBTF. Of some 1,800 claims filed during the past fiscal year, only four or five were filed by unrepresented applicants according to UEBTF. Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.
- Applicants' attorneys have consistently complained about the many technicalities and formalities with which they must comply to file a valid claim. The process cannot be greatly streamlined because it is necessary to build a case that can ultimately lead to a civil judgment against the illegally uninsured employer.
- Medical providers incur increased losses on liens while waiting to get paid:
  - UEBTF does not get involved early enough in the claims.
  - According to UEBTF, it learns of a claim on an average of 10 months after the injury.
  - Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while.
  - Other times, the injured worker goes without treatment until a critical situation arises or he or she initially receives treatment from Medi-Cal or another program.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

### Recommendations

CHSWC recommendations include:

- Publicize and enforce the workers' compensation coverage requirement:
  - Continue and expand efforts to ensure that all employers comply with the requirement to provide workers' compensation coverage.
  - Conduct outreach to workers, employers, medical providers, clinics, and social service programs regarding workers' compensation coverage requirements and reporting of uninsured employers.
- Provide workers' compensation coverage information:
  - Continue the effort to provide convenient and rapid public access to workers' compensation insurance coverage information. Currently, 29 states provide proof of coverage verification online.
  - Ensure that proof of coverage data are presented in a standardized, uniform format so as to be easily utilized.
  - Provide rapid access to coverage information without processing written requests to WCIRB.
  - Ensure that required reports about DLSE investigations of uninsured employers are publicly available and easily accessible online.
- Improve methods to help workers access benefits from UEBTF:
  - Develop a simplified guide on the UEBTF claims process for injured workers.
  - Educate Information and Assistance (I&A) Officers on UEBTF procedures to improve access for injured workers.
- Encourage reporting of suspected illegally uninsured employers:
  - Facilitate prompt referral of uninsured employers to appropriate enforcement agencies through mechanisms such as mandatory reporting. For example, require medical providers to report suspected uninsured employers to the California Department of Insurance (CDI) on the FD-1 fraud form.
  - Require UEBTF and OD-Legal to create a coordinated tracking system and report suspected uninsured employers to DLSE, CDI and other enforcement agencies.
  - Establish a "hotline" number for employees, employers and others to report uninsured employers and trigger an investigation of coverage by DLSE.
- Protect and improve UEBTF:
  - Improve UEBTF procedures while preserving the authority of UEBTF to recover funds from illegally uninsured employers.
  - Create a presumption of earnings, not to exceed the average wage of the occupation, so that UEBTF is protected from workers' uncorroborated claims of weekly wages that were not reported by the employer.
  - Research ideas to measure performance, identify double billing, and identify opportunities for earlier identification of likely UEBTF claimants.

## SPECIAL REPORT: UNINSURED BENEFITS TRUST FUND

- Further educate the workers' compensation community:
  - Although DWC provides ample information online on UEBTF guidelines, the process is still complicated. I&A Officers may benefit from additional training on advising workers on how to handle the UEBTF claims process.
  - Education for practitioners would facilitate their handling of basic civil procedures.
  - I&A Officers, attorneys and the community would benefit from briefings regarding the UEBTF process. While the UEBTF process is necessarily different from the process of submitting an insured claim, it can be manageable if the participants understand the requirements.
  - Consider making UEBTF filing, servicing and joining procedures part of the Annual DWC conference.

## **SPECIAL REPORT: OCCUPATIONAL AND NON-OCCUPATIONAL INTEGRATED CARE**

### **Introduction**

Group health costs have been rising much faster than inflation and wages. Costs have been rising even more quickly for treatment of occupational injuries in the California's workers' compensation system. This creates major financial challenges for employers, especially those in industries with already high workers' compensation costs. Furthermore, group health care and workers' compensation medical care are typically delivered through separate provider systems, resulting in unnecessary, duplicative, and contraindicated treatment, and inefficient administration.

Integration of group health and workers' compensation medical care is an alternative to two separate systems of medical care. The basic concept of integrated care is having the same physician or medical group treat all conditions – both occupational and non-occupational – regardless of the cause of illness. An integrated system could offer savings on medical utilization, unity pricing, and administrative expenses while potentially offering improvements in the quality of care. A secondary advantage of integration could be expanding access to affordable medical insurance.

### **Integrated Occupational and Non-Occupational Medical Care Pilot**

The Commission on Health and Safety and Workers' Compensation (CHSWC) has partnered with the California HealthCare Foundation (CHCF), DMS Facility Services, and the Service Employees International Union (SEIU) Local 1877 in a pilot program of integrated occupational and non-occupational medical care.

SEIU Local 1877 requested assistance from CHSWC and the University of California (UC), Berkeley with negotiating a collective bargaining agreement that would integrate both occupational and non-occupational medical treatment under the union's Taft-Hartley Health and Welfare Trust. A pilot program integrating occupational and non-occupational care began in February 2008 between DMS Facility Services, a unionized employer with employees throughout California, and SEIU 1877. The pilot is part of a carve-out agreement. The pilot uses Kaiser Permanente for delivery of both workers' compensation medical care and group health benefits. The goal of the pilot is to identify areas of administrative savings and ways to reduce litigation. UC Berkeley is conducting data analysis for pricing issues and developing the evaluation strategy.

Savings are expected in medical utilization, indemnity costs, and administration. Medical services are expected to be delivered with fewer delays and disputes, enabling injured employees to recover more fully and return to work sooner.

### **Integrated Occupational and Non-Occupational Medical Care Roundtables**

The Occupational and Non-Occupational Integrated Care (ONIC) project has conducted a series of roundtable discussions with employers, unions and providers focusing on the pilot program described above of integration of occupational and non-occupational medical care. Roundtable discussions focused on: lessons learned from an integrated medical care pilot; challenges to implementing integrated medical care; and recommendations and objectives when moving toward integrated medical care.

The Department of Industrial Relations (DIR), the California Manufacturers & Technology Association (CMTA), CHSWC, and UC Berkeley held a roundtable for private sector employers. Roundtable discussion addressed issues relating to integrating workers' compensation medical care and group health. The purpose of the discussion was to assist employers in evaluating their potential for integrating care and undertaking steps towards that goal. Discussion covered such topics as: the pros and cons of integrating care; different models of integration; specific steps towards integrating care; and potential barriers and how to address them.

## SPECIAL REPORT: OCCUPATIONAL AND NON-OCCUPATIONAL INTEGRATED CARE

A key outcome of this roundtable was the recommendation that the public sector would be the most appropriate setting for a pilot. The next steps would be to develop a feasibility study of integration in the public sector using public sector data.

A second roundtable, held by the American Federation of Labor (AFL-CIO) and CHSWC for labor representatives, focused on issues relating workers' compensation medical care and group health. The next steps from the roundtable would be to work with unions on providing specific details and resources on carve-outs and integration of occupational and non-occupational medical care. In addition, a panel of carve-out experts will be organized in which unions and employers can present their successful experiences with carve-outs.

Additional roundtables were held by CHSWC for representatives of the California Applicants' Attorneys Association (CAAA), public sector participants from the Executive Branch and CalPERS, and group health insurers and employer purchasing coalitions.

Issues raised at the CAAA roundtable included: whether legislative or constitutional changes would be needed; what the role of treatment guidelines and the requirements for record keeping would be under integration; what the process for permanent disability would be; whether there would be medical coverage if an employee changes employer; and whether integration of care models exist in other states.

The next steps from the public sector working group roundtable were to: provide a cost/benefit analysis of alternatives; review what already has been drafted by the Governor's Office and other parties on integration of care; and obtain figures from the Department of Personnel (DPA) about what the State of California is paying for group health.

The next steps from the group health insurers and employer purchasing coalitions roundtable were to: meet with CalPERS to look at possible pilot solutions; identify interest on the part of the State; to identify a large self-insured employer to consider integrated care; and provide more information on the integrated care pilot, when available.

CHSWC is in discussions with the National Academy of Social Insurance (NASI) and CHCF to hold a national forum on integration of care. The purpose would be to promote dialogue and share insights on ways to improve both quality and efficiency of medical care for ill or injured workers.

### **Factsheet on Integrated Occupational-Non-Occupational Medical Care**

The following factsheet provides an overview of the benefits of integration of occupational and non-occupational medical care. The factsheet describes how different levels of integration would provide different benefits.



## Factsheet

# Integrating Group Health and Workers' Compensation Medical Care



## What Is Integrated Health Care?

Traditionally, employers and their employees have been required to deal with two separate systems to obtain employee medical care. Non-occupational medical conditions have been treated through group health plans, while occupational injuries and illnesses have been treated through the workers' compensation system.

With integrated health care, the same individual physician or medical group sees the employee for both occupational and non-occupational conditions. Starting with this simple concept, integration can be implemented in many ways, as described below.

## Why Integrate Care?

Rising premiums for group health plans and the high costs of workers' compensation continue to threaten employers' profitability. The same factors can also limit employees' access to group health coverage as the availability of affordable coverage declines.

Integrating care in the two systems can reduce costs by eliminating duplicative treatment and reducing the costly administration of workers' compensation medical care. Integration can also improve quality of care through better coordination of care and broader access to treatment. The form and extent of integration determine the degree of improvement in quality of care and level of cost savings.

This factsheet describes findings from a pilot project conducted in 2006-08 to integrate medical care for unionized janitorial workers in California. The principal participants were the workers' union, Service Employees International Union (SEIU) Local 1877, and a major janitorial employer, DMS Facility Services. Collaborating organizations included Kaiser Permanente, workers' compensation insurers, and workers' compensation brokers. The project was managed by the California Commission on Health and Safety and Workers' Compensation and the University of California, Berkeley's Survey Research Center and Institute for Research on Labor and Employment. Partial support was provided by a grant from the California HealthCare Foundation.

## Achieving Integration

The important changes involved in integrating insurance as well as medical treatment will face resistance from entrenched interests. Our experience is that to be successful, implementing integration beyond simply using the same provider requires several conditions:

- ▶ Rising workers' compensation premium rates to motivate employers.
- ▶ Commitment within an employer's organization from both the group health and workers' compensation administrators.

—continued—

## Achieving Integration —continued—

- ▶ A large enough pool of covered workers to motivate insurers to offer new, innovative products. This may involve a very large employer or an association of employers.
- ▶ A strong advocate at the highest level of the employer's organization or employer association to drive the change despite the resistance of many established interests.

Group health and workers' compensation are controlled by two different, complex, and often mismatched legal systems. Employers and employees can move integration forward despite these incompatibilities. However, legislative and regulatory changes would facilitate integration, reduce costs, and increase benefits. These changes could include:

- ▶ Aligning the definitions of necessary medical treatment in the two systems.
- ▶ Reducing and/or eliminating many reporting requirements that exist under workers' compensation but are unnecessary under integration.
- ▶ Placing medical treatment dispute resolution under a single process for both occupational and non-occupational conditions.

## Levels of Integration

The extent of integration is an important factor in cost and quality of care.

### Basic Integration

At its most basic level, integrating care means that the same individual physician or medical group sees the employee for both occupational and non-occupational medical conditions.

*What are the benefits of basic integration?*

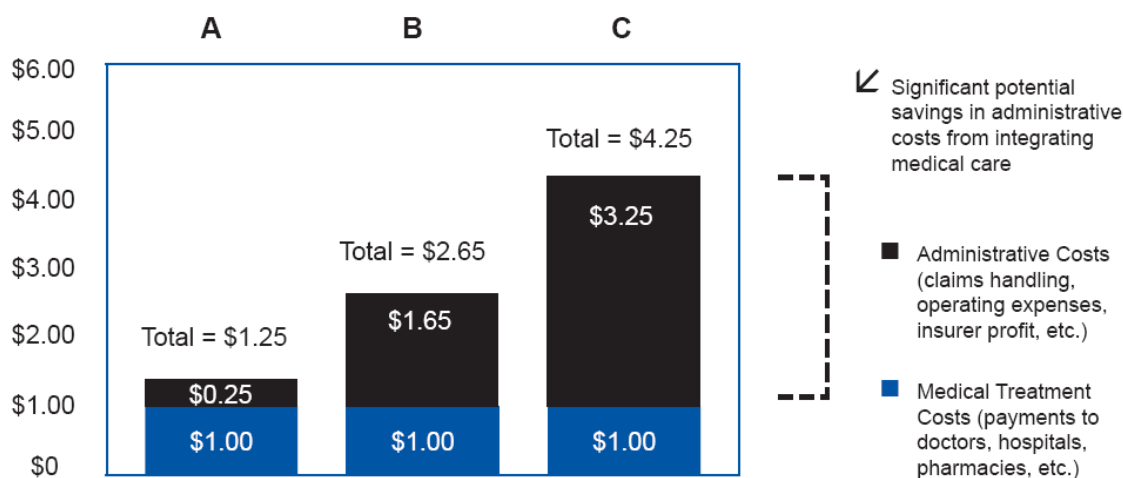
Basic integration can reduce costs by avoiding duplicative care. It can also improve the quality of care through better coordination of medical tests and treatment, as well as avoiding unnecessary or inconsistent care.

*How can care be integrated at this level?*

The employer and workers' compensation claims administrator can integrate care at this level by selecting and offering to employees the same provider for both group health and workers' compensation medical care, and by requiring the provider to fully coordinate all tests and treatment, including pharmaceuticals.

## Cost of Delivering Treatment Through Group Health and Workers' Compensation

*In California from 1994-2006, the average total cost of delivering \$1 of medical treatment through group health plans (A) was much lower than the cost of delivering it through workers' compensation (B). The cost through workers' compensation was even higher in 2004-06 (C) after changes were made in the system. (Data derived from Workers' Compensation Insurance Rating Bureau publications, 2007, and Center for Policy and Research publications, 2005.)*



## SPECIAL REPORT: OCCUPATIONAL AND NON-OCCUPATIONAL INTEGRATED CARE

### Greater Integration

Care can be further integrated under a single medical provider or medical group by combining the insurance premiums for both occupational and non-occupational medical treatment in a single insurance product.

*What are the benefits of this type of integration?*

In addition to the costs saved with basic integration, this type of integration offers the potential to save significant administrative costs. The main driver of workers' compensation medical care costs is the administrative expense to review and approve treatment recommendations and pay providers. This can be 8 to 15 times higher than in group health, and it consumes two-thirds or more of premium dollars related to medical benefits.

*How can care be integrated at this level?*

Combining insurance means paying a single premium to the group health insurer to cover occupational and non-occupational treatment. Usually this is a single premium per worker per month (the capitated rate commonly used by health insurers). This approach eliminates many of the administrative processes (e.g., utilization review, bill review, bill payment, etc.) that drive high administrative costs in workers' compensation.

### Full Integration

Full integration means that the employee receives the same medical benefits regardless of whether his or her condition is work-related. No distinctions are needed regarding causation to determine whether the employee may receive care, whether the employee may see his or her regular physician, or whether deductibles or co-payments are required.

*What are the benefits of full integration?*

Full integration completely eliminates the expensive administration and overhead that characterize workers' compensation medical treatment. It eliminates disputes and delays in medical treatment related to identifying the source of payment, and eliminates the inefficient overlap between workers' compensation and group health.

*How can care be integrated at this level?*

Full integration requires health insurance coverage for the entire working-age population. It may require that workers share in some of the costs of care. If these structural changes can be made, workers will have greater access to care and total costs will be substantially reduced.

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## Benefits of Integrating Care

*This chart ranks the benefits of integrating care at different levels, with A+ indicating the best outcome and F indicating the worst.*

	No Integration	Basic Integration	Greater Integration	Full Integration
Quality of Care	C	B	B+	A
Access and Timeliness of Care	D	C	A	A
Disputes and Resolution	F	D	B	A
Administrative Streamlining	F	C-	B	A+
Cost Savings	F	C-	B+	A+

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## PROJECTS AND STUDIES

### Introduction

In response to its Labor Code mandate, the Commission on Health and Safety and Workers' Compensation (CHSWC) has engaged in many studies to examine the health and safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of most concern to the community.

CHSWC studies are conducted by staff and independent researchers under contract with the State of California. Advisory Committees are composed of interested members of the workers' compensation community and the public who provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990s and to assess the impact on workers and employers. While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies and to concerns and interests expressed by the Legislature and the health and safety and workers' compensation community.

This report contains synopses of current and recently completed projects and studies followed by an overview of all CHSWC projects and studies. These projects are categorized as follows:

- I. Permanent Disability and Temporary Disability
- II. Return to Work
- III. Return to Work and Disability Management
- IV. Medical Care
- V. Worker's Compensation Reforms
- VI. Fraud
- VII. Insurance Industry
- VIII. Information for Workers and Employers
- IX. Occupational Safety and Health



#### **California Labor Code Section 77(a)**

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may conduct or contract for studies it deems necessary to carry out its responsibilities."

## PROJECTS AND STUDIES

### SYNOPSSES OF CURRENT CHSWC PROJECTS AND STUDIES

#### PERMANENT DISABILITY

This section starts with a discussion of the comprehensive evaluation of permanent disability (PD) by the Commission on Health and Safety and Worker's Compensation (CHSWC) and continues with descriptions of CHSWC's other ongoing studies.

##### ***Background***

The most extensive and potentially far-reaching effort undertaken by CHSWC is the ongoing study of workers' compensation PD in California. The CHSWC study incorporates public discussions with studies by RAND and other independent research organizations. The CHSWC study deals with major policy issues regarding the way that California workers are compensated for PD incurred on the job.

The evaluation of PD is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation. The manner in which California rates and compensates injured workers for temporary disability (TD) and permanent partial disability (PPD) has enormous impact on the adequacy of injured workers' benefits, the ability of injured workers to return to gainful employment, the smooth operation of the Division of Workers' Compensation (DWC) adjudication system, and the cost of the workers' compensation system to employers.

CHSWC's PD project consists of two phases. The focus of the first phase of the evaluation is on measuring the long-term earnings losses and other outcomes for workers with PD claims. The second phase is intended to refine these measures and, at the same time, provide policymakers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers.

##### ***Permanent Disability – Phase 1***

##### **Initial Wage Loss Study**

The initial report from the CHSWC study of PD, "Compensating Permanent Workplace Injuries: A Study of the California System," examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- PPD claimants experienced large and sustained earnings losses over the five years following injury. These losses amounted to approximately 40 percent of the earnings these workers would have made if injury had not occurred.
- Workers' compensation benefits replaced only 40 percent of pre-tax earnings losses and only 50 percent of after-tax earnings losses.
- Losses are largely driven by lower employment rates among PPD claimants over the years following injury.
- Earnings losses and disability ratings are not closely related, particularly for low-rated claims. Replacement rates -- the fraction of losses that are compensated by benefits -- were lowest for the lowest-rated claims.

**Status:** Completed.



## PROJECTS AND STUDIES

*For further information...*



CHSWC Report: "Compensating Permanent Workplace Injuries: A Study of the California System" (RAND, 1998)



CHSWC Report: "Findings and Recommendations on California's Permanent Partial Disability System- Executive Summary" (RAND, 1997)



Check out: <http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf>

### ***Policy Advisory Committee***

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community's responses and to recommend further action. The committee began meeting in November 1997.

#### **Goals Established by the CHSWC Permanent Disability Policy Advisory Committee**

- Decrease in an efficient way the uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including costs to injured workers.

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers' compensation community wanted additional information on how other factors, such as demographics and local economic conditions, affected the outcomes of the wage loss study. Observations were also made about the initial study parameters, as the study lacked data on employees of self-insured employers and data beyond the 1991-1993 period.

The Permanent Disability Policy Advisory Committee urged CHSWC to study those issues further, and CHSWC voted to continue the comprehensive evaluation of workers' compensation PD. Continuation of the evaluation of PD includes the following projects.

### **Enhancement of the Wage Loss Study to Include Self-Insureds**

Stakeholders objected to the 1998 report, "Compensating Permanent Workplace Injuries: A Study of the California System," because they believed that self-insured employers, which account for one-third of claims in California (an estimate that CHSWC in 2008 has revised to 30 percent, including self-insured employers and the State), would have better outcomes for PPD claimants. Stakeholders felt that since self-insured employers are larger and higher-paying firms and since they directly bear the full cost of their workers' compensation claims, they should have more programs to encourage return to work (RTW) and a more motivated workforce.

#### **Private Self-Insureds**

The report entitled "Permanent Disability at Private, Self-Insured Firms" was released in April 2001. This report includes an unprecedented data-collection effort on PD claims at self-insured firms in California. The findings of this report include:

- Better RTW at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants' proportional losses of about 32 percent.

## PROJECTS AND STUDIES

- Since workers at self-insured firms have higher wages, they are more likely to have weekly wages that exceed the maximum temporary disability (TD) payment. Therefore, workers' compensation benefits replaced a smaller fraction of losses at self-insured firms. Workers at these self-insured firms experienced lower five-year wage-replacement rates (48 percent) than workers at insured firms (53 percent).
- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20<sup>th</sup> percentile had 14 percent and 11 percent of their lost earnings replaced by benefits, respectively.
- PPD claimants with high pre-injury earnings and high indemnity claims experienced large dollar losses that were not compensated by benefits.

**Status:** Completed.

For further information...



CHSWC Report: "Permanent Disability, Private Self-Insured Firms" (RAND, 2001)

Check out: <http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf>

### **Permanent Disability – Phase 2**

#### **Legislation Is Based on Permanent Disability Interim Study**

The multi-year study of PD was nearing its conclusion when a crisis in the worker's compensation system precipitated a series of reforms affecting the four major types of benefits: medical treatment; TD; PD; and vocational rehabilitation. The PD reform was enacted by Senate Bill (SB) 899 in 2004. The amended Labor Code Section 4660 called for a revision of the PD rating schedule (PDRS) with explicit reference to an interim report from the nearly completed study. The final report was published in 2005, containing a thorough review of PD compensation, including the underlying rationale for PD compensation, the measurement of wage loss, and the measurement of how well the California system was meeting its goals.

The final report observed that the California PDRS had come to be regarded as costly, inequitable, inconsistent, and prone to disputes. Workers who sustained similar earnings losses for different types of injuries received different amounts of compensation. The CHSWC Permanent Disability Study by RAND consisted of a detailed analysis of the PDRS in order to provide empirical findings that could guide a revision that would be consistent with the economic losses experienced by permanently disabled workers. The study empirically identified the components of the schedule that contribute to inconsistency and made recommendations to reduce them.

The CHSWC study by RAND recommended:

- Basing the PD schedule on the American Medical Association *Guides to the Evaluation of Permanent Impairment*, fifth edition (AMA Guides)
- Adjusting PD ratings to ensure that ratings were proportional to wage losses across different types of injury.

**Status:** Completed.



## PROJECTS AND STUDIES

For further information...



CHSWC Report: "An Evaluation of California's Permanent Disability Rating System" (RAND, 2005)



Check out: [http://www.dir.ca.gov/CHSWC/Reports/Eval\\_Of\\_CA\\_PD\\_System.pdf](http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System.pdf)

### Permanent Disability Rating Schedule Analysis

With the enactment of Senate Bill (SB) 899 in 2004, the Governor and the Legislature intended to enact a PD rating system that would promote "consistency, uniformity, and objectivity."<sup>50</sup> The legislation carried out recommendations that emerged from CHSWC studies and included other changes as well. SB 899 made changes to:

- The goal of the rating schedule, giving consideration to diminished future earning capacity in place of consideration to diminished ability to compete in an open labor market (Section 4660(a)), as well as promoting consistency, uniformity and objectivity (Section 4660(d)).
- The criteria for medical evaluations using the AMA *Guides* in place of the often subjective criteria traditionally used in California (Section 4660(b) (1)).
- The adjustment factors to be included in the Schedule for Rating Permanent Disabilities, specifying that diminished future earning capacity be a numeric formula based on average long-term loss of income according to empirical studies (Section 4660(b)(2)).
- The apportionment of disability between industrial injuries and other causes when a disability is caused by the combination of two or more injuries or diseases (Sections 4663 and 4664).
- The number of weeks of PD benefits payable for each percentage point of PPD, reducing payments by up to 15 weeks on all awards of less than 70 percent PPD (Section 4658(d)(1)).
- The dollar amount of weekly PD benefits depending on whether the employer offers to continue to employ the permanently disabled worker, if the employer has 50 or more employees (Section 4658(d)(2) and (d)(3)).

Implementation of SB 899 required the Administrative Director of the DWC to adopt a revised PDRS. The Legislature requested that CHSWC report on the impact of the change in the PDRS, as well as how the schedule could now be amended in compliance with Labor Code Section 4660(b)(2), which requires the use of findings from the RAND report and other available empirical studies of diminished future earning capacity.

In response to this legislative request, CHSWC developed a paper that evaluated the impact of the changes in the PDRS using data from the Disability Evaluation Unit (DEU) that did not exist when the latest reform was adopted.

### Findings

- At the time the 2005 schedule was adopted, adequate empirical studies did not exist to permit accurate calculation of the relationship between impairments evaluated according to the AMA *Guides* and diminished future earning capacity.
- The 2005 schedule has reduced average PD awards (dollar value of award based on rating) by more than 50 percent for unrepresented cases and by about 40 percent for represented cases.

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<sup>50</sup> Labor Code Section 4660(d).

## PROJECTS AND STUDIES

- The 2005 schedule has reduced the average PD rating (rated percentage of disability) by about 43 percent for unrepresented cases and by about 40 percent for represented cases.
- Revisions of the schedule can be formulated immediately and revised periodically. (See CHSWC study “Permanent Disability Rating Schedule Analysis.”)

The CHSWC Permanent Disability report provides a methodology for updating the PDRS to obtain more consistent ratings for all types of injuries. The report recommends a new mathematic formula using administrative data from DWC and the latest available wage loss data to make all ratings calculations consistent. The ratings are then entered into the existing system to calculate the level of benefits. An important recommendation in the report is that periodic revision to the rating schedule be adopted such that any future trends in medical impairments and earnings losses can be detected and incorporated in the formula.

The report also suggests that, beyond using a consistent methodology, overall levels of ratings and compensation should be considered a separate public policy issue. The report acknowledges that issues of benefit adequacy and affordability are issues for policymakers to debate. Subsequent unpublished work has suggested that the goal of equity across types of injuries can be achieved through amendments to the PDRS as contemplated in the CHSWC report, but the goal of benefit adequacy may require a combination of legislative action and amendments to the PDRS.

### **Status**

Completed. CHSWC voted on February 9, 2006, to approve and release the report “Permanent Disability Rating Schedule Analysis.”

*For further information...*



CHSWC Report: Permanent Disability Rating Schedule, February 23, 2006.



Check out: <http://www.dir.ca.gov/chswc> and <http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf>

## PROJECTS AND STUDIES

### PERMANENT DISABILITY

#### APPORTIONMENT

##### Understanding the Effect of Senate Bill 899 on the Law of Apportionment

###### ***Background***

Apportionment is the process in which an overall permanent disability (PD) that was caused at least in part by an industrial injury is separated into the components that are and are not compensable results of that injury. Senate Bill (SB) 899, signed into law by Governor Schwarzenegger on April 19, 2005, profoundly changed the law of apportionment. Decades of interpretation of the old law of apportionment are called into question, with some principles still being applicable and others being reversed. The Commission on Health and Safety and Workers' Compensation (CHSWC) report provides information on the effect of SB 899 on the prior law of apportionment, how apportionment is likely to be affected by the American Medical Association *Guides to the Evaluation of Permanent Impairment*, fifth edition (AMA *Guides*), and what the key issues are that remain to be resolved. A summary of the report follows.

###### **Repeal of Preexisting Disease and Previous Permanent Disability or Impairment Language**

SB 899 repealed Labor Code Section 4663 which provided that if a preexisting disease were aggravated by a compensable injury, compensation was allowed only for the portion of the disability due to the aggravation reasonably attributed to the injury. SB 899 also repealed Labor Code Section 4750 which provided that an employee "suffering from a previous PD or physical impairment" could not receive compensation for a subsequent injury in excess of the compensation allowed for the subsequent injury "when considered by itself and not in conjunction with or in relation to the previous disability or impairment" and that the employer was not liable "for the combined disability, but only for that portion due to the later injury as though no prior disability or impairment had existed."

###### **Apportionment by Causation**

To replace the repealed sections, SB 899 re-enacted Section 4663 in an extensively revised form and added a new Section 4664. The revised Section 4663 provides that "apportionment of permanent disability shall be based on causation." Apportionment is determined by the approximate percentage of the PD caused by the direct result of the industrial injury and by the approximate percentage of the PD caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. A PD evaluation is not considered complete unless it includes an apportionment determination. Labor Code Section 4664(a) was added to emphasize that the employer is only liable for the percentage of PD "directly caused" by the injury. The repealed sections do not appear inconsistent with the new sections, but the case law interpreting the repealed sections considerably limited their application.

The problem faced by members of the workers' compensation community is how the authors of this legislation intended permanent disabilities to be apportioned under the new law. The final Senate floor analysis says only that it was intended to "replace present law on apportionment with the statement that apportionment of permanent disability is based on causation." It is clear, however, that the announced purpose of SB 899 was to reduce the cost of providing workers' compensation.

###### **Some Issues Resolved**

Some questions that had been settled under the old law arose again under the new law of apportionment. One that brought Workers' Compensation Appeals Board (WCAB) decisions to a halt until the Supreme Court could address it was the question of how a dollar award should be calculated in cases of apportioned disability. Because the dollars are not directly proportional to the disability rating, the dollar value of an apportioned award depended on which formula was used.

## PROJECTS AND STUDIES

The three possible methods were:

- Formula A: subtract the percentage of non-industrial disability from the percentage of combined disability, the remainder being the amount of compensable disability.
- Formula B: determine the number of weekly benefits authorized for the combined disability, multiply it by the percentage of industrially related disability, and award the resulting number of weeks.
- Formula C: subtract the dollar value of the non-industrial disability from the dollar value of the combined disability.

A Supreme Court case under the old law had held that Formula A was correct, but the question arose anew under the new law of apportionment. In *Brodie v. WCAB* (2007) 40 CA 4th 1313, the Supreme Court ruled that Formula A still applies under the new statutes.

Thus, it is now settled that apportioned awards are calculated by subtracting the percentage of non-industrial disability from the percentage of combined disability. The remainder is the percentage of compensable disability for which benefits are awarded.

### **Issues Unresolved**

Many other issues, including the definition of "directly caused," remain to be resolved although some cases have hinted at it. Sections 4663 and 4664 require that compensable PD be "caused by the direct result of injury" and "directly caused by the injury." Because there has not been a clear issue of remote causation in any of the reported decisions to date, the Board has not been faced with defining "directly caused." This is just one of the issues remaining to be resolved before the full impact of the amended law of apportionment will be understood.

### **Status**

In process. At its August 9, 2007 meeting, CHSWC approved the release of the draft report on apportionment for public comment. The report requires updating to reflect subsequent judicial interpretations.

## PROJECTS AND STUDIES

### RETURN TO WORK

#### Return-to-Work Study

##### **Background**

Several provisions of recent workers' compensation legislation, Assembly Bill (AB) 227, Senate Bill (SB) 228, and SB 899, included important statutory and regulatory changes meant to encourage return to work (RTW) at the at-injury employer. Studying the impact of these changes is important for understanding how to construct appropriate incentives for both employers and employees. The significance of the research extends beyond California because the innovations in the recent reform legislation may offer a model for other states to follow when reforming their systems.

Thorough evaluations are critical for improving California's workers' compensation system, lowering employer costs related to temporary disability (TD) and permanent disability (PD), lowering employers' indirect costs, such as hiring and training, and reducing workers' wage losses associated with TD and PD.

In response to the need for further research and analysis, the Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with RAND to study the impact of recent RTW and vocational rehabilitation reforms on employer costs and injured worker outcomes.

##### **Objectives and Scope of the Study**

The purpose and objectives of the RTW study are to comply with the request by Assembly Member Keene and Assembly Member Vargas to evaluate RTW efforts in California in light of the changes caused by current legislation, SB 899.

The study will include an evaluation of the current state of RTW and vocational rehabilitation or the supplemental job displacement benefit (SJDB) for injured workers in California, and will identify issues, evaluate the impact of recent legislative changes, and make recommendations for how to construct appropriate incentives for both employers and employees.

The study shall focus on, but not be limited to, all of the following important research questions that involve evaluation of the recent legislation on RTW:

- What has been or will be the impact of the 15 percent "bump up, bump down" (increase, decrease) on disability benefits, the subsidy program for workplace modifications by small businesses, and the SJDB voucher program (which replaced the old vocational rehabilitation benefits) on the likelihood that a permanently disabled worker returns to work at the at-injury employer? With what frequency are these incentives applied?
- Have the reforms led to a change in the duration of cases that we see on TD, with or without ever receiving PD benefits? If so, what are the implications for injured worker outcomes and employer costs?
- After the reforms, are there workers who remain out of work for a substantial period without receiving permanent partial disability (PPD)? If so, how long do they remain on TD, and what is the likelihood that they eventually return to work? Are these workers effectively targeted by RTW programs?
- What impact have the reforms had on employer efforts to promote RTW? Have the reforms made it more cost-effective to implement a formal RTW program?

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## PROJECTS AND STUDIES

- Are there other steps that policymakers in California can and should take to improve RTW outcomes for injured workers?
- Will educational vouchers in place of vocational rehabilitation services improve worker outcomes while lowering employer costs?

Study information will be organized around five central themes:

- Evaluation of the trends in use of various programs affecting RTW.
- Evaluation of the impact of the reforms on the adoption of RTW programs by employers.
- Estimation of the impact of the reforms on the duration of work absences due to workplace disabilities.
- Review of the changes in the distribution of TD and PD benefits received.
- Assessment of the overall impact of these reforms on workers' compensation benefit adequacy and affordability in California.

### ***Status***

Ongoing. There have been some initial delays due to data availability.

### RETURN TO WORK

#### Return-to-Work Best Practices

##### **Background**

Many firms in California have adopted practices to improve return to work (RTW) of injured employees. Policymakers may wish to encourage increased emphasis on RTW as a means to reduce uncompensated wage loss.

##### **Description**

This project collected data on the RTW practices from a sample of 40 large, private self-insured California employers and examined their effectiveness. The data were collected prior to the recent reforms, but the detailed information about the efforts to improve RTW is useful to understand the nature of policies in place, the activities taken, and the type of coordination with medical providers.

The report will cover the following topics:

- How effective are employer practices to improve RTW?
- How much do employers and workers benefit in the long run?

##### **Objectives**

The objectives of this project are to:

- Provide information on the most effective RTW practices of California employers. This information is intended to assist employers and employees to determine which RTW practices may be applicable to their needs.

##### **Findings**

Preliminary findings of the study included that:

- Employer-based RTW programs improve employment outcomes of injured workers.
- Positive effects are driven by employers that make a substantial investment in programs.
- Investments in RTW programs appear to be cost-effective.
- Firms that have a written RTW policy with rules produce outcomes of fewer weeks on temporary disability (TD) and fewer weeks to return to the at-injury employers, as well as fewer weeks until sustained RTW.

##### **Status**

The draft report is expected in 2009.

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### RETURN TO WORK AND DISABILITY MANAGEMENT

#### California Consortium to Promote Stay at Work/Return to Work

##### **Background**

In June 2007, CHSWC participated in a Stay at Work (SAW)-Return to Work (RTW) Northern California Summit titled, "Preventing Needless Work Disability by Helping People Stay Employed." American College of Occupational and Environmental Medicine (ACOEM) guidelines on the SAW-RTW, process were used to launch breakout discussions among employer, labor, insurer and medical provider stakeholders, and other interested participants.  
(See <http://www.acoem.org/guidelines.aspx?id=566>).

In 2008, CHSWC continued to participate on the California SAW-RTW Consortium, which was created to continue the work of the Summit. CHSWC supports the following disability management definition and goals/objectives of the California SAW-RTW Consortium (<http://www.saw-rtw-californiasummit.com/>):

##### **Disability Management**

- Disability management, including preventing needless work disability, is an issue of high priority in the United States and the global economy, as it is the most effective way of reducing costs to employers and improving productivity.
- Disability management includes key stakeholders in the health and safety and workers' compensation communities: large, medium-size and small employers, workers, risk managers, unions, jurisdictional and local government agencies, the insurance industry, health care providers, policymakers, and the public.

##### **Goals/Objectives**

- Promote discussion of the benefits of productive employment and the relationship of ongoing employment to disability prevention and accommodation.
- Discuss incentives for large, medium-size and small employers and for workers to develop and implement effective disability management, including prevention, SAW and RTW programs.
- Make expert resources available to help large, medium-size and small employers, health care providers, and labor representatives implement and manage prevention, SAW, RTW and transitional programs.
- Share best practices for gaining stakeholder cooperation and achieving measurable gains in disability management.
- Optimize decision-making for the development and implementation of disability management programs through the provision of accessible, evidence-based data and information.

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## PROJECTS AND STUDIES

- Determine and implement disability management performance metrics, data gathering, analysis, interpretation, reporting and dissemination that lead to effective disability management.

**Status:** Ongoing.

### RETURN TO WORK AND DISABILITY MANAGEMENT

#### International Forum on Disability Management 2010

##### **Background**

As part of its commitment to disability management, the Commission on Health and Safety and Workers' Compensation (CHSWC) is collaborating with the International Association of Industrial Accidents Boards and Commissions (IAIABC) to host the International Forum on Disability Management (IFDM) 2010, in Los Angeles. The Forum will be devoted to multinational dialogue on disability management. Held biannually since 2002, IFDM is the only global conference dedicated to in-depth discussion of problems, trends, and best practices in disability management. A major goal of IFDM is to bring key policymakers into the discussion and be an agent of change.

##### **Description**

IFDM 2010 is expected to bring together over 500 attendees, representing over 25 countries, from the health, safety, and workers' compensation communities.

The purpose of IFDM 2010 is to bring together policymakers, such as legislators and heads of the executive branches, dynamic leaders in labor, business and insurance, and experts in disability management, including people mastering personal disability. Representatives of organizations with an interest in disability issues and a commitment to more effective systems for overcoming barriers to the rehabilitation and full integration of workers with disabilities in gainful employment will participate in the discussion.

The main themes emphasized during the Forum will be:

- Ways to maximize outcomes and efficiencies within a disability management program.
- Integration of short-term disability (STD)/long-term disability (LTD)/workers' compensation programs where the insurer has a disability and workers' compensation certificate of authority or pursuant to joint marketing opportunities.
- Coordination of disability management programs and joint marketing approaches.
- Benefits of integration through: (1) savings by reducing the number of disability absences, the length and acuity of disability absences, the costs of medical treatment and disability, and indirect disability costs; and (2) ensuring early and sustained return to work.

**Status:** In process.

##### **Advisory Committee**

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## MEDICAL CARE

### Medical Study of Impact of Recent Reforms

A Commission on Health and Safety and Workers' Compensation (CHSWC) study by RAND will evaluate recent legislative changes affecting medical treatment provided to workers who have sustained industrial injuries and illnesses in California. The study will also provide technical assistance in evaluating potential legislative and administrative refinements to the current system, including ways payment incentives might be used to improve the quality of care provided to injured workers.

#### Background

A series of legislative changes affecting medical care provided to California's injured workers has been enacted over the past few years to address medical utilization and cost issues. While there is evidence that these changes are reducing medical expenses, the impact of these changes on access, quality and outcomes is unknown. The study will evaluate the impact of the changes both on an individual provision-by-provision basis and in combination. The four topics for evaluation are: medical necessity determinations; medical networks; provision for early medical treatment; and adoption of Medicare-based fee schedules. The study will evaluate the impact of the new provisions on cost, quality, and access of injured workers to appropriate and timely medical care and will identify issues and make recommendations for addressing areas of potential concern.

Senate Bills (SB) 228 and 899 made a number of changes that affect how medical-necessity determinations are made for medical care furnished to injured workers. Most notably, the changes included: the treating physician presumption was repealed; presumption was extended to the utilization schedule issued by the Administrative Director (AD) of the Division of Workers' Compensation (DWC) (i.e., the ACOEM *Guidelines*); limits were placed on the number of chiropractic, physical therapy and occupational therapy visits per occupational injury; new utilization review (UR) requirements were established; and new appeals processes were created.

Effective January 1, 2005, employers may provide medical care through medical provider networks (MPNs) that injured workers will be required to use throughout the course of their treatment. The network must have a sufficient number of providers representing a variety of specialties in locations convenient to covered workers and must include physicians engaged in care of work-related injuries and illnesses, as well as physicians engaged primarily in care of non-occupational conditions. The network providers must agree to provide care in accordance with the utilization schedule adopted by the AD. A study funded by DWC on injured worker access issues examined key questions regarding the impact of the networks on injured worker access to care and patient satisfaction. This study, conducted by the University of California Los Angeles (UCLA) Center for Health Policy Research, includes a survey of injured workers and provider focus groups.

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## PROJECTS AND STUDIES

Additional research is required in three major areas to identify potential policy issues and best practices in network formation and operation:

- The process used to form medical networks, including the considerations affecting the employer decision to establish an MPN, the strategies used to form the network (pre-existing or new, narrow or broad), quality assurance and enrollment processes, profiling, and fee discounting, etc.
- The capacity of the networks to meet the needs of the injured worker.
- The impact of the networks on medical utilization, costs, and outcomes.

Under California's Labor Code, a claim is presumed compensable unless it is rejected within 90 days. Prior to SB 899, this contributed to treatment delays, since employers had no incentive to accept liability before the 90-day period elapsed. SB 899 added a new requirement intended to facilitate prompt treatment for work injuries. An employer is required to authorize medical care in accordance with the medical treatment guidelines beginning within one working day after an injured worker files a claim and continuing until the claim is accepted or rejected. Until the compensability determination is made, liability is limited to \$10,000, and any treatment does not create a presumption of employer liability for the claim. The impact of this provision on access, costs, and quality of care needs to be examined, including:

- Time lapsed between the date of injury, date a claim is filed, date initial treatment is obtained, and the date compensability is determined (initially and after any appeals).
- Employer medical costs (includes treatment, medical-cost containment and administrative expenses).
- Percentage of claims appealed and the proportion ultimately determined compensable/non-compensable.

In evaluating these issues, other factors that might affect impact, such as whether the injured worker is also covered by group health insurance and whether the worker is represented by an attorney, etc., should be taken into account.

Under SB 228, the Official Medical Fee Schedule (OMFS) for services other than physician services furnished to injured workers is linked to Medicare fee schedules or, in the case of pharmaceuticals, MediCal. The aggregate payment for each type of service (e.g., inpatient hospital services, outpatient hospital services) is limited to 120 percent of the amount payable under Medicare for comparable services. For most services other than physician services, fee schedules tied to 120 percent of the amounts payable under Medicare were implemented in 2004. Physician services were reduced 5 percent but not below the amount payable under Medicare.

The impact of the fee schedule changes on access and cost should be evaluated. In addition, any issues of concern that are identified should be assessed, and options and recommendations for addressing them should be developed.

Medicare, group health insurance and managed care plans are devoting considerable effort to developing structured financial incentives to improve the safety and quality of care, i.e., paying for performance.

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## PROJECTS AND STUDIES

Designing a pay-for-performance initiative is a complex undertaking that must pay equitably for medically necessary services, promote desired changes in the way care is delivered, and avoid unintended consequences.

### **Description**

Information will be gathered for this study through the following activities:

- Review of all workers' compensation legislation passed during the 2003 and 2004 legislative sessions to determine if it should be evaluated for purposes of this project. This includes but is not limited to provisions pertaining to medical care in Assembly Bill (AB) 227, SB 228 in 2003, and SB 899 in 2004.
- Review of the rulemaking record for regulations implementing the legislative provisions referenced above and other relevant literature and studies pertaining to implementation of the provisions.
- Interviews with key informants involved in providing medical treatment to injured workers, paying for services that are provided, representing injured workers, and regulating the workers' compensation program.
- Case studies of at least four MPNs that examine the process of network formation and operation as well as the capacity of the networks to meet injured worker needs. The networks chosen for study should be representative of the different models that have been established. The case study should include both key informant interviews and analysis of administrative data.
- Review of the literature pertaining to the use of financial incentives to encourage improvements in the quality and efficiency of care with respect to both medical treatment provided to injured workers and medical care provided more generally within the health care system.

**Status:** Ongoing.

### MEDICAL CARE

#### Quality-of-Care Indicators: A Demonstration Project

##### **Background**

Ensuring that workers receive high-quality medical care would benefit both workers and employers. Better medical care would enable workers to make faster and more complete recoveries and reduce time off work which drives economic losses for injured workers. From the employers' perspective, a lack of a recovery can create a need for more medical care over time, thereby increasing medical costs. Reducing temporary disability (TD) and permanent disability (PD) would decrease economic losses for employees.

The Commission on Health and Safety and Workers' Compensation (CHSWC) demonstration project by RAND, the "Quality of Medical Care in Workers' Compensation: Developing General Indicators for Carpal Tunnel Syndrome" would attempt to suggest a mechanism for monitoring and improving the quality of care provided to injured workers.

##### **Project Team**

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##### **Description**

A recent landmark study by RAND found that across all health care settings, adults in the U.S. receive only about half of the care recommended by published literature and experts. Researchers on the project also found that quality-of-care problems are pervasive for back and joint injuries, for which a third to half of U.S. patients do not receive appropriate care. The poor quality care generally provided for back and joint injuries suggests that many injured workers probably also do not receive the appropriate care.

The goal of the project would be to demonstrate quality measurement in a workers' compensation setting and would involve four objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

##### **Status**

At its April 6, 2006 meeting, the Commission approved moving ahead with phase one of the project, the development of quality-of-care indicators for carpal tunnel syndrome.

Quality measures have been prepared and recruiting for sites for pilot testing and data collection are in process. Several manuscripts are in process for submission to peer-reviewed medical journals. Discussions with additional funding partners are underway.

## PROJECTS AND STUDIES

### MEDICAL CARE

#### Occupational and Non-Occupational Integrated Care (ONIC) Pilot Evaluation Project

##### **Background**

Group health care costs have been rising much faster than inflation and wages. Costs have been rising even faster for treatment of occupational injuries in the California workers' compensation system. This creates major financial challenges for employers, especially those in industries with already high workers' compensation costs. Furthermore, group health care and workers' compensation medical care are typically delivered through separate provider systems, arguably resulting in unnecessary, duplicative and contraindicated treatment, and inefficient administration.

##### **Description**

The California HealthCare Foundation (CHCF) awarded a planning grant to the Commission on Health and Safety and Workers' Compensation (CHSWC) to evaluate the potential savings to both occupational and non-occupational health costs from integrating all care under a single provider.

The project seeks to determine whether delivering both occupational and non-occupational care within an integrated provider network will reduce overall costs. The project team is collaborating with union and employer representatives to integrate occupational and non-occupational medical services for janitorial workers and to evaluate cost savings and improvements in health care delivery.

The union, the Service Employees International Union (SEIU) Local 1877, and employer, DMS Facility Services, a unionized employer with employees throughout California, have negotiated, created, and entered into a labor-management "carve-out" agreement (authorized by California workers' compensation law) to allow medical services to be delivered with fewer constraints, delays, and disputes than in the state workers' compensation system. The carve-out agreement includes an alternative dispute resolution (ADR) system as an alternative to the state system involving formal legal proceedings before a workers' compensation judge.

Savings are expected in medical utilization, indemnity costs, and administration. Medical services are expected to be delivered with fewer delays and disputes, enabling injured workers to recover more fully and return to work sooner.

##### **Project Team**

This project is being coordinated by researchers from the Survey Research Center at the University of California (UC), Berkeley, and CHSWC with funding from CHCF. Also collaborating on the project are Kaiser Permanente and the California Workers' Compensation Institute (CWCI).

##### **Status**

The pilot agreement is completed, and integrated occupational and non-occupational care is presently available for the janitorial workers of DMS Facility Services. A report on the evaluation of the pilot will be conducted.

##### **California HealthCare Foundation**

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### MEDICAL CARE

#### Occupational and Non-Occupational Integrated Care Roundtables

##### **Background**

The Occupational and Non-Occupational Integrated Care (ONIC) Project is conducting a series of roundtable discussions with employers, unions, and providers focusing on a pilot program in integration of occupational and non-occupational medical care.

The pilot is between DMS Facility Services, a unionized employer with employees throughout the State of California, and the Service Employees International Union (SEIU) 1877. The goal of the pilot, which is under a carve-out and uses Kaiser for delivery of workers' compensation medical care and group health, is to identify areas of administrative savings and how to eliminate litigation, as well as to improve to delivery of care. The pilot is being conducted by CHSWC and the University of California (UC), Berkeley with support from the California HealthCare Foundation (CHCF).

The basic concept of integrated care is having the same physician or medical group treat all conditions – both occupational and non-occupational – regardless of the cause of injury or illness. There are many ways to accomplish integration. Key benefits of integration are that it eliminates duplicate tests and treatment, as well as inconsistent care by different providers; and it allows for better coordinated care and concurrent care for all conditions. Integration of care helps control costs by avoiding disputes about causation and by reducing administration of two separate systems.

##### **Description**

Roundtables have been held for key stakeholders in the workers' compensation system to assess integration of occupational and non-occupational care.

The Department of Industrial Relations (DIR), the California Manufacturers & Technology Association (CMTA), CHSWC and the University of California (UC) Berkeley held a roundtable for private sector employers. Roundtable discussion addressed issues relating to integrating workers' compensation medical care and group health. The purpose of the discussion was to assist employers in evaluating their potential for integrating care and undertaking steps toward that goal. Discussion covered such topics as: the pros and cons of integrating care; different models of integration; specific steps toward integrating care; and potential barriers and how to address them.

This first roundtable included 17 stakeholders in the workers' compensation system representing insured and self-insured employers, insurance carriers, and medical providers. Discussion centered on identifying the current issues and challenges with respect to 24-hour care in California including:

- Lessons learned from the integrated medical care pilot.
- Challenges to implementing integrated medical care.
- Recommendations and objectives when moving toward integrated medical care.

A second roundtable was held by the American Federation of Labor (AFL-CIO) and CHSWC. The roundtable included over 40 stakeholders representing labor.

##### **ONIC Roundtables**

###### **Project Team**

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###### **Partners**

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## PROJECTS AND STUDIES

Additional roundtables were held by CHSWC for representatives of the California Applicants' Attorneys Association (CAAA), public sector participants from the Executive Branch and CalPERS, group health insurers and employer purchasing coalitions.

### ***Outcomes and Next Steps***

A key outcome of the first roundtable was the recommendation that the public sector would be the ideal setting for a pilot. The next steps would be to develop a feasibility study of integration in the public sector, using public sector data. Preliminary meetings have been held with some parties who have indicated they would cooperate.

The next steps from the labor roundtable would be to work with unions on providing specific details and resources on carve-outs and integration of occupational and non-occupational medical care. In addition, a panel of experienced carve-out participants should be organized in which union and employer representatives can share their experiences with unions and employers that are considering carve-outs.

Issues raised at the CAAA roundtable included: whether legislative or constitutional changes would be needed; what the role of treatment guidelines and the requirements for record keeping would be under integration; what the process for permanent disability would be; whether there would be medical coverage if an employee changes employer; and whether integration of care models exist in other states.

The next steps from the public sector working group roundtable were to: provide a cost/benefit analysis of alternatives; review what already has been drafted by the Governor's Office and other parties on integration of care; and obtain figures from the Department of Personnel (DPA) about what the State of California is paying for group health.

The next steps from the group health insurers and employer purchasing coalitions roundtable were: to meet with CalPERS to look at possible pilot solutions; to identify interest on the part of the State; to identify a large self-insured employer to consider integrated care; and to provide more information on the integrated care pilot, when available.

**Status:** Completed.

### MEDICAL CARE

#### State Disability Insurance Integration Project

##### **Background**

California State Disability Insurance (SDI) makes support payments to people in the labor force who have non-occupational disabilities that preclude working. Workers' compensation makes support payments to workers who are off work as a result of occupational-related disabilities. Disputes about the cause of disabling conditions result in a substantial amount of litigation. The two systems target the same objective, wage replacement for temporarily disabled workers. However, the efforts are complicated, administrative costs are increased by the need to assign the liability for disability between the occupational and non-occupational systems.

The integration of the two systems into a single seamless system could reduce the costs to both workers and employers while improving outcomes.

##### **Description**

Senator Richard Alarcón requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) study the integration of SDI and workers' compensation temporary disability (TD) insurance.

The current study covers the years 2000 to 2002. An extension has been proposed that would extend the data to include the years 2003 to 2006 and cover a broad range of issues important to labor and management. The study would highlight the following issues:

- How recent changes to overall workers' compensation benefits, particularly permanent partial disability, apportionment and medical treatment, have affected the fraction of occupational injuries (employer-paid) being shifted to SDI (employee-paid).
- How the recent dramatic run-up and subsequent decline in workers' compensation premiums may have affected whether claims are made in workers' compensation or SDI.
- Whether the differences in the benefit rates affected the system in which claims were filed. Over the period 1993 to 2005, benefit levels in workers' compensation and SDI changed periodically by significant amounts and generally at different times in each system.
- Whether serious occupational injuries, those involving permanent disability (PD), have consequences for social safety-net programs, such as Medi-Cal, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), etc.

##### **Project Team**

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## PROJECTS AND STUDIES

This would be the first study of its kind to estimate the effects of occupational injuries on the broad spectrum of social welfare and social insurance programs.

### ***Findings***

Preliminary findings in the current CHSWC study on the relationship between occupational injury rates and SDI suggest that SDI may be paying benefits for a substantial fraction of illnesses and a smaller but important fraction of injuries that are actually work-related, at least during periods of high workers' compensation premiums.

The current study has also compared the administrative cost of delivering benefits under each system. Preliminary analysis of costs in each system found that administrative costs of delivering the temporary disability benefit through workers' compensation are 5 to 15 times as great as administrative costs under SDI.

If these preliminary results hold up after additional analysis, as is expected, the cost savings from integrating the two benefits under the more efficient SDI model, could allow both employers and workers to pay less for the same benefits.

### ***Status***

The final report on the integration of SDI and workers' compensation TD benefits is expected to be available in 2009.

### MEDICAL CARE

#### Pay-for-Performance

##### *Background*

This study focuses on the potential for creating financial incentives to encourage and reward the delivery of high-quality, efficient care to California's injured workers. Recently, financial incentives or pay-for-performance mechanisms have rapidly gained favor in other health care sectors but have rarely been used in California's workers' compensation system.

##### *Scope*

A recent RAND study evaluating the medical care provided under California's workers' compensation system made several recommendations to drive improvement to value-based medical care provided to injured workers. A key recommendation was to implement a new physician fee schedule and create financial incentives to improve quality and efficiency of care.

The study draws on models and lessons learned in group health programs to assess the options, challenges, and potential benefits of adopting pay-for-performance incentives for physician services in California's workers' compensation system.

Existing pay-for-performance programs reward health care providers based on their performance on a set of specified measures related to one or more of the following: quality; efficiency; administrative processes (e.g., timely submission of reports); information technology adoption (e.g., electronic billing); and patient satisfaction.

The study includes assessments of: the benefits of pay-for-performance, the lessons learned from group health programs; the key design components of a pay-for-performance program; the potential models for a workers' compensation pay-for-performance program; and the challenges to implementing a workers' compensation pay-for-performance program.

##### *Findings*

The study findings included:

- There are challenges to implementing a workers' compensation pay-for-performance program, including the lack of clinical measures for workers' compensation conditions, multiple payers, and the many physicians who treat only a few workers' compensation patients.
- Three models might be able to surmount these problems, provided that stakeholders have the commitment and trust to work through the design issues and allow the pay-for-performance program to evolve over time.
- Given the current workers' compensation environment and amount of change that has occurred in the medical treatment system over the past few years, the various stakeholders need to confirm their willingness to undertake a collective pay-for-performance initiative.
- CHSWC should expand the discussion to include representatives of the various stakeholder constituencies to gauge their levels of interest in and commitment to a pay-for-performance initiative, define the programs' goals and objectives, and identify potential "idea champions" to promote pay-for-performance concepts with the California workers' compensation stakeholder community.

##### ***Project Team***

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## PROJECTS AND STUDIES

- Pay-for-performance alone will not be sufficient to drive value-based medical care provided to injured workers; rather, it should be considered as part of a multi-pronged set of strategies designed to increase the efficient delivery of high-quality care that enables rapid and sustained return to work.

Integrating pay-for-performance with the following strategies may accelerate the drive for value-based medical care in the California workers' compensation system: establish an ongoing monitoring system to assess system performance, that is, access, quality, cost, utilization and patient satisfaction; develop clinical criteria to measure appropriate care; make evidence-based treatment guidelines on common workers' compensation conditions and modalities readily available; and adopt a new physician fee schedule.

**Status:** Completed.

## PROJECTS AND STUDIES

### WORKERS' COMPENSATION REFORMS

#### Medical-Legal Study

##### **Background**

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission on Health and Safety and Workers' Compensation (CHSWC) initiated a project to determine the impact of the workers' compensation reform legislation on workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center (SRC) at the University of California (UC), Berkeley to carry out this study.

##### **Description**

The study analysis is based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. WCIRB data summarize accident claim activity, including such measures as degree of impairment, the type and cost of specialty examinations, whether the case was settled and, if so, the method of settlement employed.

##### **Findings**

The study determined that a substantial decline in total medical-legal costs occurred during the 1990s. The decline in total medical-legal costs for insurers results from significant decreases in all components of the cost structure. The source of savings can be attributed in equal proportion to the reduction in the number of evaluations performed per claims and the decline in PPD claim frequency.

##### **Status**

The medical-legal study was initiated in 1995 and is ongoing.

##### **Medical-Legal Project Advisory Committee**

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Larry Law  
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Karen Yifru  
WCIRB

##### **Medical-Legal Project Team**

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## PROJECTS AND STUDIES

### FRAUD

#### Anti-Fraud Studies and Activities

This section describes the findings from Commission on Health and Safety and Workers' Compensation (CHSWC) studies on fraud and fraud measurements.

##### **Background**

The California State Auditor Report on Workers' Compensation Fraud in 2004 indicated that:

- Currently, over 30 million dollars a year are spent on anti-fraud activities.
- Baselines for measuring the level of fraud need to be developed to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.
- Efforts to detect and prevent workers' compensation fraud need to be adequate.
- Cooperation between agencies to improve efforts to detect and prevent workers' compensation fraud is critical.

At the December 10, 2004 meeting of the Commission on Health and Safety and Workers' Compensation (CHSWC), William Zachry, Chair of the Fraud Assessment Commission (FAC), requested that CHSWC assist FAC with anti-fraud research.

On February 4, 2005, a working group met and decided that FAC and CHSWC would partner with agencies, including the California Department of Insurance (CDI), to put together a study design on how to measure workers' compensation medical provider fraud and other types of suspected workers' compensation fraud in California and then would issue a request for proposal (RFP) on the study.

Funds were allocated by FAC in 2006 to conduct a study of medical overpayments and underpayments as a way to benchmark medical provider fraud and develop detection and measurement methods. An RFP was made public in May 2006, and proposals were submitted in June 2006. Navigant Consulting was selected to conduct the Medical Payment Accuracy Study.

In addition to this joint project with CDI, CHSWC is conducting complementary studies that address other issues of suspected fraud and non-compliance, as well as the measurement of their magnitude and type. CHSWC relies on partnerships and stakeholder experts for review of results and proposed recommendations. The following is a brief review of recent fraud studies and their objectives. A separate Special Report on Fraud Studies in this Annual Report provides more detail on these studies and activities.

##### **Description**

The objectives of the fraud studies include:

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## PROJECTS AND STUDIES

- Determine the extent of workers' compensation medical overpayments and underpayments of all types, including suspected fraud, waste, abuse, and billing and processing errors in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California. This study is carried out jointly by FAC and CHSWC.
- Estimate the percent or number of uninsured employers.
- Identify uninsured employers operating in the underground or "gray" economy.
- Determine under-reporting of injuries.
- Determine misreporting of payroll and estimate the degree of premium avoidance by insured employers.
- Estimate the degree of misreporting of split class codes, when lower-wage worker payrolls are reported as higher-wage ones in order to take advantage of the lower premiums in the higher-wage class codes.

**Status:** Ongoing



## PROJECTS AND STUDIES

### FRAUD

#### Workers' Compensation Medical Payment Accuracy Study

##### **Background**

About 50 percent of California's workers' compensation benefits paid in 2005 were for medical costs. Employers in California continue to experience higher costs for workers' compensation claim medical care than employers in most other states. Identification of medical provider overpayments and underpayments of all types, including fraud, waste, abuse, and billing and processing errors, could help to reduce costs.

The California Department of Insurance (CDI) contracted with Navigant Consulting for the Workers' Compensation Medical Payment Accuracy Study, and the Commission on Health and Safety and Workers' Compensation (CHSWC) provided administrative and technical assistance. A final report was produced in June 2008.

##### **Objectives**

The purpose of the Workers' Compensation Payment Accuracy Study was to:

- Determine the extent of workers' compensation medical overpayments and underpayments to justify and provide information on appropriate allocation of resources to detect and evaluate suspected medical provider fraud in California.
- Provide recommendations for ongoing detection and monitoring of suspected abuse and fraud in the workers' compensation system.
- Identify potential vulnerabilities and suspected perpetrators of fraud.

##### **Findings**

- 21.9 percent of the sample dollars were paid in error (combined three reviews analysis).
- 27.4 percent of the sample dollars were paid in error (medical review only analysis).
- 4.5 percent of the sample dollars were paid in error (electronic processing only analysis).

Based on these sample error rate results, it is estimated that:

- Total potential payment errors in the entire California workers' compensation system range from \$494 million to \$1,372 million (combined three reviews analysis).
- Total potential payment errors in the entire California workers' compensation system range from \$822 million to \$1,513 million (medical review only analysis).
- Total potential payment errors in the entire California workers' compensation system range from \$122 million to \$261 million (electronic processing review only analysis).

##### **Project Team**

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*Christine Baker*  
*CHSWC, Co-chair*

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*Navigant Consulting*

##### **CHSWC Staff**

Lachlan Taylor

Chris Bailey

## PROJECTS AND STUDIES

### ***Recommendations***

The recommendations below include ways to address a variety of causes of payment errors identified in this study, as well as ways to more directly identify potential fraud:

- Increase education efforts for providers and insurers about appropriate courses of care per American College of Occupational and Environmental Medicine (ACOEM) *Guidelines* for the highest-volume types of injuries.
- Analyze the new medical bill database in the Workers' Compensation Information System (WCIS) using a range of analytic techniques to identify aberrant patterns and trends in workers' compensation medical billing fraud on a systemwide basis and focus investigative efforts.
- Consider expanding statutory authority for access by CDI to injured workers' medical records.
- Develop a medical benefits administration best practices checklist for employers to use in evaluating the efforts of their workers' compensation insurers or third-party administrators in ensuring medical payment accuracy and preventing and detecting fraud.
- Consider requiring insurers to send Explanation of Benefit (EOB) notices to injured workers.
- Consider requiring provider registration for worker's compensation.

### ***Recommendations for Next Steps***

The following selected next steps are recommended:

- Begin analyzing the medical bill data in WCIS.
- Conduct a follow-up payment accuracy study in 2010 using WCIS medical bill database to determine if implementation of any of the recommendations above or others have had an effect on payment accuracy levels.

***Status:*** Completed.

## PROJECTS AND STUDIES

### FRAUD

#### **Underreporting of Injuries: “Reporting of Workers’ Compensation Injuries in California: How Many are Missed?”**

##### **Background**

Underreporting of occupational injuries and illnesses may occur in response to increases in premium costs. Such underreporting is often proposed as a partial explanation for the continuing decline in occupational incidence rates. The Commission on Health and Safety and Workers’ Compensation (CHSWC) contracted with Boston University to conduct this injury reporting study, using a large sample of Workers’ Compensation Information System (WCIS) data and Bureau of Labor Statistics (BLS) data and applying a capture-recapture analysis methodology.

##### **Objectives**

The purpose of the study was to:

- Describe the proportion of injuries and illnesses that are underreported and the demographic, work and employer characteristics of underreported injuries and illnesses.
- Describe the nature of non-reported injuries/illnesses and the reasons for non-reporting.
- Provide improved estimates of incidence and underreporting for all cases involving more than three days off work or permanent partial disability.

The approach of the study was to:

- Use individual workplace injury reports to workers’ compensation agencies and BLS data to measure underreporting. Specifically, the research procedure is to:
  - Collect BLS and worker’s compensation injury data.
  - Use both sources to improve injury estimates.
  - Match individual injury records.
  - Obtain the number of injuries reported to either.
  - Estimate the number reported to neither.

Participating states were California, Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin.

The data sources for this study are:

- State Workers’ Compensation Databases:
  - Lost-time injuries.
  - First and subsequent reports.

##### **Project Team**

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## PROJECTS AND STUDIES

- BLS Annual Survey of Injuries and Illnesses:
  - Stratified probability sample of employers.
  - OSHA 300 injury reports.
  - State and national estimates of non-fatal injury incidence.

### ***Findings***

- The most conservative estimate of reporting of workplace injuries in California suggests that 21 percent to 25 percent of lost-time injuries go unreported to WCIS. A less conservative estimate of underreporting implies that 40 percent of lost-time injuries go unreported.
- Reasonable alternate scenarios allow for the likelihood that reporting an injury to BLS increases the likelihood that it will be reported to the WCIS. Under these circumstances, researchers estimate that only about two-thirds of injuries are reported to WCIS. This incomplete reporting places California in the middle of the seven states researchers studied.
- There appears to have been an increase in reporting from injuries occurring in 2003 to injuries between July 2004 and June 2005. This suggests that the 2004 reforms probably did not lead to a decline in the reporting of injuries to WCIS. Researchers do not know whether this increase is a random fluctuation or a stable change.
- From a policy perspective, benefit payment is at least as important as injury reporting. Researchers do not know how many workers receive benefits for injuries that go unreported to WCIS. It seems likely that benefits have been paid but not reported in many cases; however, evidence about this is inadequate to support an estimate.
- Unreported injuries may be eligible for workers' compensation benefits but receive none. In this case, the unpaid workers' compensation benefits pose a burden to the injured workers and their families, health insurance programs, and public and private disability programs.

### ***Recommendations***

- CHSWC, the Division of Workers' Compensation (DWC), the California Department of Public Health (CDPH), the Division of Labor Statistics and Research (DLSR), and Cal/OSHA should convene an interagency underreporting task force to develop a plan for improving WCIS reporting. This would include identifying late reporting, but also identifying employers, insurers, and third-party administrators (TPAs) that do not report compensated injuries. This task force could include not only knowledgeable people from these agencies, but also people involved in other relevant activities, like California's reporting to the BLS survey and planning for the California Trauma Registry.

#### *Specific recommendations include:*

- DWC could strengthen its efforts to identify problem areas in reporting of compensated injuries. This would include identifying late reporting, but also identifying employers, insurers, and TPAs that do not report compensated injuries. In doing so, DWC may identify problems in the way reporting systems work, in addition to identifying non-compliance with reporting requirements.

## PROJECTS AND STUDIES

- DWC and Cal/OSHA could consider collaborating to identify employers who underreport injuries. Employers who engage in substantial underreporting to either system could be given substantial penalties, and the program and penalties could be publicized. DWC could also consider penalties for late reporting to WCIS. If current laws and regulations are inadequate to support such a program, this could be addressed.
- DWC could begin an inquiry into the 40-50 percent of reported claims that lack information about benefit payments. DWC could draw a random sample of such cases with dates of injury at least three years in the past from a subset of claims administrators for insurers, TPAs and self-insured employers. Initially, the claims administrators might be chosen because they have a relatively high proportion of cases lacking benefit reports. DWC could submit the sample to the trading partners and request up-to-date information on benefit payments and claim status. From this information and discussions with trading partners, DWC may be able to diagnose systematic problems and develop solutions.
- California collects data on hospital and emergency room discharges and from ambulatory surgery clinics through Medical Information Reporting for California (MIRCal). The Department of Industrial Relations (DIR) might explore whether these data could be used to look for unreported workplace injuries and illnesses. The data contain diagnosis and social security number of the patient and identify the expected source of payment. They do not identify the employer. If the WCIS data included state Employment Development Department (EDD) account numbers (EANs), cross-matching with EDD wage files to determine the employer would be easier and more accurate than otherwise. It is not known if there are any legal issues precluding this use of MIRCal data.
- CHSWC could explore linking other state occupational safety and health information systems with WCIS data to determine whether injuries and illnesses have been reported and compensated where appropriate.
- DIR could explore automating the doctor's first report of occupational injury or illness and requiring all doctors' first reports to be electronically transmitted. For example, reports could be filled out on the Internet and automatically transmitted to DIR. These reports could be compared with WCIS files to determine where underreporting occurs.
- DWC may want to consider rejecting reports of injury with invalid or incorrect EINs. These numbers can be valuable for potential uses of WCIS, including but not limited to the underreporting issue.
- DWC should consider adding the state EAN as a required field in the First Report of Injury. This would allow easier and more accurate linkage with EDD wage files and other state data collected from employers.
- California has recently added workers' compensation questions to the State's Behavioral Risk Factor Surveillance System (BRFSS) survey. This could be used as another way to determine the extent of workers' compensation underreporting. Over time, it could be used to determine whether reporting is improving.

**Status:** Completed.

## PROJECTS AND STUDIES

### FRAUD

#### Premium Avoidance by Insured Employers

##### **Background**

In the absence of auditing or accountability, an employer seeking to minimize insurance costs has incentives to misreport payroll for different types of employees. If employers do misreport payroll, it would be expected to be more prevalent during periods when costs are high. Consequently, employers would report less payroll as workers' compensation costs as a percentage of payroll increase. The Commission on Health and Safety and Workers' Compensation (CHSWC) contracted with University of California (UC), Berkeley to estimate the magnitude of misreported payroll in the system.

##### **Objectives**

The purpose of the study is to determine the extent of underreporting by:

- Examining the reporting behavior of employers' reported exposure compared to premium rates in order to determine possible trends and relationships in underreporting/misreporting.
- Examining self-insured employers' reporting behavior for any differences with insured employers.
- Describing reporting behaviors in low-risk, low-premium classes and high-risk, high-premium classes at different premium rate levels in history.

The approach of the study is to analyze:

- Changes in reported exposure and premium rates over time, by different employers and by different risk and premium classes, using Workers' Compensation Insurance Rating Bureau (WCIRB) data.
- Whether misreporting changes the relationships between exposure and premium rates, by comparing reported wages from the Current Population Survey (CPS), a Census Bureau survey conducted for the Bureau of Labor Statistics (BLS), with WCIRB-reported payroll exposure.
- The extent to which experience modifications (Ex-Mods) are correct for misreporting.

##### **Findings**

From 1997 to 2002 (the most recent data available), there was substantial underreporting of premium by employers. Underreporting ranges from about 10 percent in 1997, when rates were substantially lower, to an excess of 20 percent in 2002, when rates were several times higher than 1997. This amounts to about \$30 billion of underreported payroll in 1997 and to about \$100 billion in payroll in 2002.

Between \$30 and \$100 billion of payroll is underreported over this period for employers that should be insured for workers' compensation insurance. This includes the underground economy and underreporting by employers that do have insurance. The result is that premium rates are likely to be unfairly high for honest employers who probably face rates two to five times higher in the high-risk class codes than they would face under full reporting. This result also affects the competitiveness of honest employers. There are only limited incentives for insurers to accurately monitor underreporting, and underreporting is probably offset by the higher premium rates that are observed.

**Status:** Completed.

##### **Project Team**

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## PROJECTS AND STUDIES

### FRAUD

#### Split Class Codes

##### **Background**

There is an incentive to save on workers' compensation costs by misreporting of payroll for different class codes of workers in class codes specifically designed for higher-wage workers in the construction industry. If misreporting of class codes is prevalent, honest employers are subsidizing dishonest employers. If misreporting is prevalent, honest employers will face higher premiums for their higher-wage employees and lower-wage employees. This study is a related project on premium avoidance by insured employers conducted by the University of California (UC), Berkeley.

##### **Objectives**

The purpose of the study is to:

- Determine whether employers are misreporting lower-wage workers in class codes specifically designed for higher-wage workers.
- Determine the level that employers with high-wage workers are subsidizing the workers' compensation costs to employers for low-wage workers.

The approach of the study is to:

- Evaluate the payroll reporting by firms against payroll reporting by individual employees, using Workers' Compensation Insurance Rating Bureau (WCIRB) data and data from the Current Population Survey (CPS).
- Analyze the differences, if any, between reported aggregate payroll relative to true payroll in the split classes (high-wage vs. low-wage).
- Examine data for all monthly CPS surveys for the years 1997-2004 and 2005, if available.

##### **Findings**

Only about two-thirds of wages are apparently being reported in low-wage classes. Almost 20 percent more wages than expected are reported in high-wage classes. There is consistent misreporting of a significant fraction of low-wage payroll in the high-wage, low-premium rate classes.

It is hoped that through these research studies, the Commission on Health and Safety and Workers' Compensation (CHSWC), the Fraud Assessment Commission (FAC) and the Department of Insurance (CDI) will partner to:

- Develop baseline measurements to detect the level of fraud in the workers' compensation system.
- Coordinate efforts to detect and prevent workers' compensation fraud.
- Potentially reduce the overall cost that fraud adds to the workers' compensation system.

These research studies will benefit all members of the workers' compensation community.

**Status:** Completed.

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## PROJECTS AND STUDIES

### FRAUD

#### Insurance Commissioner's Advisory Task Force on Insurance Fraud

##### *Background*

The Insurance Commissioner's Advisory Task Force on Insurance Fraud was convened on May 31, 2007, at the invitation of Insurance Commissioner Steve Poizner. The Task Force was to work for one year and deliver recommendations to Insurance Commissioner Poizner on ways to reduce or eliminate insurance fraud. The Executive Officer of the Commission on Health and Safety and Workers' Compensation (CHSWC) chaired the Working Committee for Workers' Compensation and convened focus groups of experts, including those listed below.

##### *Objectives*

The goals of the Task Force were to:

- Review the efficiency of the Department of Insurance (CDI) Fraud Division.
- Review anti-fraud efforts by the insurance industry and provide recommendations for improvement.
- Review Criminal Insurance Code statutes and regulations of anti-fraud programs and make recommendations for improvement.
- Determine new technology for CDI which can be used to reduce the incidence of insurance fraud.
- Review all outreach efforts by CDI and make recommendations for improvement.

The Advisory Task Force report "Reducing Insurance Fraud in California" was issued in May 2008 and can be found at <http://www.insurance.ca.gov/0300-fraud/upload/FraudTaskReport05-08.pdf>. (See Special Report: Fraud Studies for more detailed recommendations.)

##### *Recommendations*

The Workers' Compensation Working Group made the following recommendations to the Advisory Task Force, many of which were incorporated in recommendations applying to all lines of insurance:

- Require employers to publicly disclose their workers' compensation coverage to improve compliance with Labor Code Section 3700, which requires this insurance.
- Require the Insurance Commissioner to publish the workers' compensation coverage of every employer to improve compliance with Labor Code Section 3700, which requires this insurance.
- Increase civil and criminal penalties for premium fraud, including misclassification of payroll and under-reporting of payroll.
- Increase civil and criminal penalties for willful failure to carry insurance. Existing law allows under-reporting to be punished as a felony, while being uninsured is only a misdemeanor. The law should allow willful lack of insurance to be charged either as a misdemeanor or as a felony.
- Review the cost benefit of requiring carriers, third-party administrators, and self-insured entities to send a statement of benefits document to patients to verify that services were actually rendered and the extent of those services and to include information on where and how to report suspected fraud.



## PROJECTS AND STUDIES

- Conduct additional research on: the misuse of an independent contractor designation; coverage fraud in temporary help and professional employment agencies; medical billing practices; and methods to require greater disclosure of employer coverage information.

### **Workers' Compensation Expert Working Group**

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*Chair of the Workers' Compensation Fraud Working Committee*

Dennis Ayers  
*Dunn & Bradstreet*

Dave Bellusci  
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Lilia Esther C. Garcia  
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David Goldberg  
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Scott Hauge/Lori Kammerer  
*Small Business California/Cal-Insurance & Associates*

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### **Workers' Compensation Expert Working Group (continued)**

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**Status:** Completed.

### FRAUD

#### Uninsured Employers Benefits Trust Fund

##### **Background**

All employers in California except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide for the payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710 through 3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

##### **Description**

UEBTF is administered by the director of the Department of Industrial Relations (DIR). Funding comes from assessments on all insured and self-insured employers annually, from fines and penalties imposed on illegally uninsured employers when they get caught, and from recoveries from illegally uninsured employers when UEBTF has paid benefits and is able to obtain reimbursement from responsible employers.

##### **Project Team**

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*Department of Industrial  
Relations*

Concerns have been raised about UEBTF from both employers and workers. Employers are concerned about the cost of UEBTF and the distribution of that cost among law-abiding employers. Workers are concerned about the difficulties in obtaining benefits from UEBTF.

##### **Findings**

Findings of the study include:

- The identification and location of uninsured employers along with proper enforcement would reduce the costs to stakeholders of the workers' compensation system.
- The surest way to reduce the long-term cost of UEBTF is to reduce the prevalence of illegally uninsured employers. In 1998 a Commission on Health and Safety and Workers' Compensation (CHSWC) study on illegally uninsured employers found 9 percent illegally uninsured in the system as a whole. For new employers and in the targeted industry of auto/truck repair, 15 percent and 20 percent, respectively, were uninsured.
- Labor Code Section 90.3 provided for a program to identify illegally uninsured employers. Due to lack of resources, this program was never implemented.<sup>51</sup>
- There is a lack of knowledge of UEBTF and civil procedure.
- Unrepresented applicants lack easy access to UEBTF. Of some 1,800 claims filed during fiscal year 2006, of the 2007 study, only four or five were filed by unrepresented applicants according to

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<sup>51</sup> Only recently, in 2007, was legislation passed to enable enforcement and a data matching program, to begin January 1, 2008.

## PROJECTS AND STUDIES

UEBTF. Injured workers will probably continue to require attorneys if they wish to pursue any of the additional remedies available against illegally uninsured employers.

- Applicants' attorneys have consistently complained about the many technicalities and formalities with which they must comply to file a valid claim. The process cannot be greatly streamlined because it is necessary to build a case that can ultimately lead to a civil judgment against the illegally uninsured employer.
- Medical providers incur increased losses on liens while waiting to get paid:
  - UEBTF does not get involved early enough in the claims:
    - According to UEBTF, it learns of a claim an average of 10 months after the injury.
  - Frequently, the claim is not promptly pursued by the injured worker because the employer pays bills directly for a while.
  - Other times, the injured worker went without treatment until a critical situation arose or he or she initially received treatment from Medi-Cal or another program.

### ***Recommendations***

Recommendations include:

- Publicize and enforce the workers' compensation coverage requirement.
- Provide workers' compensation coverage information.
- Improve methods to help workers access benefits from UEBTF.
- Encourage reporting of suspected illegally uninsured employers.
- Protect and improve UEBTF.
- Further educate the workers' compensation community.



### ***Next Steps***

- Develop legislative language as determined.
- Create a roundtable for discussion on UEBTF issues.

### ***Status***

Completed. At its February 23, 2007 meeting, the Commission approved the release of the report to the public.

*For further information...*

 CHSWC Report on the Uninsured Employer Benefits Trust Fund.  
 Check out: <http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf>

### FRAUD

#### Uninsured Employers Benefits Trust Fund Educational Booklet

##### ***Background***

Injured workers whose employers are illegally uninsured or whose employers do not provide information about their insurance face significant hurdles in requesting workers' compensation benefits, either from the employer or from the Uninsured Employers Benefits Trust Fund (UEBTF). It is often difficult or impossible to determine the legal name and address of the employer, obtain overage information from the Workers' Compensation Insurance Rating Bureau (WCIRB) because of the difficulties naming the employer, and find and properly serve the employer because the employer is avoiding service of process.

##### ***Project Team***

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##### ***Objectives and Scope***

Injured workers, legal services organizations, and agencies that investigate workers' compensation fraud have expressed a need for these workers to receive help and support in following the steps described above. The Division of Workers' Compensation (DWC) has produced basic materials on steps to take in a UEBTF case. Further educational work is needed to clarify and fully explain the procedural steps set forth in these materials with easy-to-understand terminology and examples. Funding has been approved for University of California (UC), Berkeley staff to assist the Commission on Health and Safety and Workers' Compensation (CHSWC) in developing a fully designed educational booklet based on DWC materials and advisory input from members of the workers' compensation community.

***Status:*** In process.

### FRAUD

#### Uninsured Employers Operating in the Underground or “Gray” Economy

##### **Background**

An unknown fraction of employers operate partially or entirely outside the standard economy, going uncovered for workers' compensation insurance as well as committing other wage and tax violations. Honest employers, workers, state social programs, the state general fund, and the federal government all suffer the consequences of fraudulent underground activity. Despite the important and extensive impact the underground economy has on honest employers and their workers, there are almost no useful estimates of the extent of the underground economy, the amount of premium and taxes avoided, or the differential impact on employers by industry. The main reason for this lack of information is that by operating underground, these employers remain outside most mechanisms used to track and measure economic activity.

Underground or “gray” economy employers may represent a major fraction of the uninsured employer population. These employers will only be identified when a worker files a claim with the Uninsured Employers Benefit Trust Fund (UEBTF).<sup>52</sup>

##### **Objectives**

The purpose of the study is to:

- Estimate the employers not covered for workers' compensation and reporting to neither the workers' compensation nor the Employment Development Department (EDD) system.
- Estimate the proportion of injuries in the gray economy.

The main approach of the study is to:

- Identify the population of all employers potentially subject to inspection by the Division of Labor Standards Enforcement (DLSE) using EDD employer files, Workers' Compensation Insurance Rating Bureau (WCIRB) policyholder database, Dun and Bradstreet data, business license records, Franchise Tax Board data, and other data sources as identified.
- After establishing the population of employers, the study can proceed with several different sampling strategies. The strategies will be developed in conjunction with the participating agencies and take advantage of the knowledge the field officers have developed from past efforts. All of these strategies will follow the same basic stratification approach.
- The next step in the effort will involve DLSE and possibly other agencies inspecting sampled employers.
- The following characteristics for the population of employers sampled will be covered:
  - Percent of employers operating completely underground.
  - Percent of employers operating substantially underground.

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<sup>52</sup> UEBTF is also still commonly called the Uninsured Employers Fund (UEF).

## PROJECTS AND STUDIES

- Percent of employment involved in the underground economy:
  - Completely underground.
  - Substantially underground.
- Percent of employers fraudulently operating without workers' compensation coverage.
- Percent of workers put at risk because employers lack workers' compensation coverage.
- Estimated impact of fraudulent avoidance of workers' compensation insurance on premiums of honest employers.
- Estimated impact of fraudulent avoidance of tax payments on state funds and tax receipts.
- Depending on the degree to which the study focuses on specific industries, the portion of all inspections that are conducted on the stratified random sample and the length of time the program is in place, researchers may also be able to analyze the above issues for individual industries or other employer characteristics.

In addition, the study will use an approach that will:

- Analyze employers with claims in UEBTF who are uninsured but who are reporting employment to EDD.
- Calculate the percentage of UEBTF uninsured claims where employers did not report employment to EDD.
- Calculate percentage of DLSE enforcement efforts resulting in violations and penalties for no workers' compensation policy.
- Estimate uninsured employers in the gray economy in California.

**Status:** In process.

### INSURANCE INDUSTRY

#### Insolvent Workers' Compensation Insurance Carrier Study

##### **Background**

A provision of recent workers' compensation legislation, Senate Bill (SB) 316 (Yee), included a requirement to examine the causes of workers' compensation insurance carrier insolvencies. Pursuant to SB 316, signed into law on October 10, 2007, "A study shall be undertaken to examine the causes of the number of insolvencies among workers' compensation insurers within the past ten years. The study shall be conducted by an independent research organization under the direction of the commission. Not later than July 1, 2009, the commission and the department shall publish the report of the study on its internet web site and shall inform the Legislature and the Governor of the availability of the report."

##### **Objectives and Scope of the Study**

The purpose and objectives of the Insolvency study are to examine the financial oversight, access to capital, risk assumed, solvency regulation, quality-of-data reporting, and underwriting, claims adjusting and reserving practices of workers' compensation insurance companies. In the process of the studying the large number of insolvencies in the past ten years, the study shall focus on developing or confirming that ongoing measurements are sufficient to preclude a repeat of the past. The study will also analyze the insurance market response to system costs within the applicable time period.

Analysis will include:

- Access to capital for workers' compensation insurance from all sources between 1993 and 2003.
- The availability, source, and risk assumed by reinsurers during this period.
- The use of deductible policies and their effect on solvency regulation.
- Market activities by insurers and producers that affected market concentration.
- Activities, including financial oversight of insurers, by insurance regulators and National Association of Insurance Commissioners (NAIC) during this period.
- The quality-of-data reporting to the Insurance Commissioner's designated statistical agent and the accuracy of recommendations provided by the Insurance Commissioner's designated statistical agent during this period of time.
- Underwriting, claims adjusting, and reserving practices of insolvent insurers. For example, the researcher should describe the general profile of the typical insurance company that went insolvent during the study period to include state of domicile, stock or mutual company, general source of capital, parent/owner, principal line(s) of business written, principal state in which it did business, etc.
- The study shall also include a survey of reports of other state agencies analyzing the insurance market response to rising system costs within the applicable time period.
- Document the impact of insolvencies on the California Insurance Guarantee Association (CIGA).

##### **Project Team**

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## PROJECTS AND STUDIES

- The structure of commissions offered by insurers.
- Lessons learned from the analyses and potential remedies.

### ***Status***

The study contract was awarded to RAND in May 2008; it began in June 2008 and is expected to be completed by June 2009.



## INFORMATION FOR WORKERS AND EMPLOYERS

### *Guidebook for Injured Workers*

#### **Background**

A *Guidebook for Injured Workers*, third edition, November 2006, was prepared for the Commission on Health and Safety and Workers' Compensation (CHSWC) based on educational fact sheets prepared in 1998 and 2000, and the first and second editions of this guidebook, prepared in 2002 and 2005. The *Guidebook* is available in Spanish and English.

#### **Objectives and Scope**

This *Guidebook* gives an overview of the California workers' compensation system. It is meant to help workers with job injuries understand their basic legal rights, the steps to take to request workers' compensation benefits, and where to seek further information and help, if necessary.

This new edition of the *Guidebook* describes the workers' compensation system as of November 2006. The *Guidebook* does not fully describe many rules, exceptions and deadlines that may apply. For example, if the date of injury was several years ago, the benefits and the steps to take may be different. Also, a union contract or a labor-management carve-out agreement may give additional rights or require different procedures.

The *Guidebook* provides injured workers with basic tips on how to take charge of their workers' compensation case and protect their rights. It also covers different kinds of workers' compensation benefits and how to continue working for the injured worker's employer.

Since the *Guidebook* cannot cover all possible situations faced by injured workers, additional resources are listed. They include governmental agencies, attorneys, health care providers, unions, and support groups, as well as books and other materials. Injured workers can use these resources to learn more about workers' compensation or to get help with their case. Appendix information includes important laws and regulations pertaining to workers' compensation and injured workers' rights, as well as a Glossary that briefly explains many of the terms that are commonly used in workers' compensation.

**Status:** Completed.

#### **Workers' Compensation 2008 Updates**

Since the *Guidebook* was published, legislation and regulations have expanded injured workers' rights in certain areas. The following updates have been posted to the Commission's website ([http://www.dir.ca.gov/chswc/Injured\\_Worker\\_Factsheets.html](http://www.dir.ca.gov/chswc/Injured_Worker_Factsheets.html)) describing these important changes:

**Workers' Compensation Update: Predesignating a Medical Group** describes the right of workers who are covered by employer-paid group health to predesignate a medical group if the medical group meets certain criteria.

**Workers' Compensation Update: New Law Extends Period for Temporary Disability Payments to Injured Workers** describes the right of workers injured on or after January 1, 2008, who are eligible to receive up to 104 weeks of temporary disability (TD) benefits, to receive those benefits within five years instead of two years. This is beneficial for workers who can return to work part of the time while recovering but whose recovery extends past two years, either because of the kind of injury they have or because of delays in treatment.

#### **Status**

Third edition and 2008 updates completed.

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## OCCUPATIONAL SAFETY AND HEALTH

### Firefighters Musculoskeletal Injuries

#### **Background**

Firefighting is a dangerous and difficult occupation that places considerable toll on the health and safety of workers. Policymakers and researchers have made efforts to understand the adverse conditions that arise at a fire ground and to devise policies and equipment that protect firefighters. However, because much of the attention has focused on monitoring and reducing fatalities and chronic diseases among firefighters, there is still much that is unknown about the causes and consequences of non-fatal acute injuries among firefighters.

In particular, musculoskeletal conditions account for a majority of all nonfatal injuries, dominate the medical costs of workers' compensation claims, and are a leading contributor to disability retirements for firefighters. In this respect, firefighting appears similar to other occupations. Still, there are aspects of firefighting that could make firefighters particularly susceptible to work-related musculoskeletal injuries: the work is often physically strenuous; it often takes place under adverse conditions (poor visibility, wet surfaces); and it involves sudden bursts of activity following long periods of inactivity. On the other hand, firefighters are typically drawn from a set of physically more fit and healthier people than the general population, which could lead to fewer musculoskeletal injuries. In addition, the long shifts associated with firefighting lead to a considerable amount of time when firefighters are conducting normal life activities while technically working, leading some to wonder what fraction of injuries occur at work that would likely have otherwise occurred at home.

Given a lack of comprehensive data, however, it is unclear as to just how many California firefighters incur what types of musculoskeletal injuries and how often these injuries occur. Such information is essential in order to determine how best to protect against musculoskeletal injuries and safeguard firefighters when they do sustain these types of occupational injuries.

#### **Description**

At the request of Assembly Member Sandré R. Swanson, Chair, Assembly Committee on Labor and Employment, to the Commission on Health and Safety and Workers' Compensation (CHSWC), the Firefighters Musculoskeletal Injury study will gather data and analyze the types, frequencies and treatments applied to the major musculoskeletal injuries incurred by firefighters in the course of performing their job-related duties.

The objectives of this project are to identify:

- What percentage of firefighter injuries are musculoskeletal injuries as compared to other job-related injuries.
- Based on the number of claims for musculoskeletal injuries, what percentage of those are ultimately determined to be compensable for the purposes of workers' compensation.
- Of those injuries that are determined to be compensable under workers' compensation, how many are subject to apportionment to other non-job-related causes.
- When such injuries are treated, how the cap on physical therapy visits affects the recovery, how often a request must be made of the employer to continue the treatments, and how often such requests are denied.

#### **Project Team**

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## PROJECTS AND STUDIES

- How often a particular musculoskeletal injury is the result of a cumulative injury that may or may not have been treated appropriately at earlier stages.
- Policy recommendations on injury prevention and addressing the compensation of these injuries.

### ***Status***

The study began in June 2008.

## OCCUPATIONAL SAFETY AND HEALTH

### Worker Occupational Safety and Health Training and Education Program

#### Background

Labor Code Section 6354.7 establishes a Workers' Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. The Commission on Health and Safety and Workers' Compensation (CHSWC) has developed a Worker Occupational Safety and Health Training and Education Program (WOSHTEP) to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

#### Description

CHSWC has taken the following steps in implementing this program:

- **Prepared a Survey of State, National and International Worker Health and Safety Training Programs.** This survey includes websites and descriptions of available programs and lists courses for each program. The survey can be found as a link on CHSWC's website at <http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html>
- **Created a labor-management Advisory Board to oversee program activities, which meets semi-annually.** The WOSHTEP Advisory Board consists of employers and workers or their representatives who assist in guiding development of curricula and broadening partnerships with worker-based organizations, labor studies programs, employers, insurance companies, and other stakeholders in the workers' compensation community.
- **Conducted needs assessments with stakeholders that will continue on an ongoing basis.** Needs assessments are conducted with workers and their representatives, employers, insurers, community-based organizations serving hard-to-reach workers, and potential training providers.
- **Designed a core curriculum and supplemental training materials based on the results of the needs assessment.** This 24-hour curriculum is aimed primarily at "workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on a health and safety committee or serving as a designated safety representative." Participants who complete six core modules and three supplemental modules become Worker Occupational Safety and Health (WOSH) Specialists.
- **Developed a training-of-trainers curriculum to train a statewide network of trainers as mandated by the statute.** Training-of-trainers sessions are held in Northern and Southern California, and network trainers have been co-teaching with mentor trainers from the Labor Occupational Health Program (LOHP) at the University of California, Berkeley (UCB), and the Labor Occupational Safety and Health (LOSH) Program at University of California, Los Angeles (UCLA).
- **Created Small Business Resources to target very small employers who do not have the resources to send employees to 24 hours of training.** Materials have been developed for the small business restaurant industry; in addition, health and safety materials have been developed that can be used by small businesses across industries; and materials are in development for the janitorial industry.

#### Project Team

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##### UC-Davis

Marc Schenker  
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Teresa Andrews

## PROJECTS AND STUDIES

- **Created health and safety programs for young workers, including a Young Worker Leadership Academy.** Academies are offered in Northern and Southern California annually.
- **Established Resource Centers that house and distribute training materials and additional health and safety resources.** These Resource Centers are located at LOHP and LOSH and the Western Center for Agricultural Health and Safety at UC Davis.

**Prepared a Multilingual Health and Safety Resource Guide to Worker Training Materials on the Web for WOSHTEP.** This Guide, prepared by LOHP, is a collection of worker training materials, such as fact sheets, checklists and other educational resources that are available. It can be found as a link on CHSWC's website, and information from it can be printed to distribute to workers participating in workplace injury and illness prevention programs.

(See <http://www.lohp.org/hsresguide/library/doc/MULINGGUIDE3.pdf>.)

### **Next Steps**

CHSWC has assessed fees to California workers' compensation insurance carriers pursuant to Labor Code Section 6354.7 for the next fiscal year. Next steps include:

- **Continued WOSH Specialist training by LOHP and LOSH** in a variety of industries for participants in diverse occupations and work settings. Courses are taught through community colleges, at employers' places of business, and in many other settings. Courses are taught in English, Spanish and Chinese.
- **Continued Refresher trainings or courses** to update WOSH Specialists on health and safety information to assist them in carrying out activities they choose to do in their workplaces after completion of the WOSH Specialist training.
- **Continued Awareness Sessions** drawing on the WOSH Specialist curriculum to help promote awareness of and interest in the WOSH Specialist course. These trainings are presented in English and Spanish.
- **Ongoing development of a statewide network of trainers** who will partner with mentor trainers from LOHP and LOSH to deliver WOSH Specialist courses.
- **Continued geographic expansion to the Central Valley and other areas of Northern and Southern California.** The UC Davis Western Center for Agricultural Health and Safety has been identified as a Central Valley partner. The Center has hired staff and is conducting WOSHTEP activities under the direction of LOHP WOSHTEP staff. Expansion in Southern California includes San Diego and the Inland Empire.
- **Ongoing dissemination of health and safety material for small businesses across industries.**
- **Ongoing development of small business health and safety training materials** and an outreach and training plan for small businesses in the janitorial industry.
- **Ongoing Young Worker Leadership Academies and young worker programs.**
- **Additional outreach to ensure wider use of Resource Centers** in Northern, Southern and Central California and wider distribution of multilingual resource training materials.
- **Ongoing evaluation of WOSHTEP** to identify accomplishments and outcomes.

## PROJECTS AND STUDIES

### WOSHTEP Advisory Board Members

Bob Balgenorth  
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Laura Boatman  
*State Building & Construction Trades Council*

Mary Deems  
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*State of California  
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Chad Wright  
*Laborers Tri-Funds*

### Advisory Board Ex-officio Members

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## PROJECTS AND STUDIES

*For further information...*

-  CHSWC Report: "Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" (LOHP, 2005).
-  CHSWC Report: "California's Worker Occupational Safety and Health Training and Education Program: A Model for Other States." (IAIABC Journal, Spring, 2005 Vol. 42, No. 1.)
-  Health and Safety Training for Owners and Managers of Small Restaurants  
<http://www.dir.ca.gov/chswc/woshtep.html>
-  Small Business Health and Safety Materials  
<http://www.dir.ca.gov/chswc/woshtep.html>
-  Heat Hazards in Agriculture: A Guide for Employers to Carry Out Tailgate Training for Workers. In English and Spanish.  
[http://www.dir.ca.gov/CHSWC/Reports/CHSWC\\_HeatAgriculturEnglish.pdf](http://www.dir.ca.gov/CHSWC/Reports/CHSWC_HeatAgriculturEnglish.pdf)  
[http://www.dir.ca.gov/CHSWC/Reports/CHSWC\\_HeatAgricultureSpanish.pdf](http://www.dir.ca.gov/CHSWC/Reports/CHSWC_HeatAgricultureSpanish.pdf)
-  Teens Speak Out About Safety on the Job: Lessons Learned From the Young Worker Leadership Academy  
<http://www.dir.ca.gov/chswc/woshtep.html>
-  Summary of the July 16, 2008 Workplace Wellness Roundtable  
<http://www.dir.ca.gov/chswc/woshtep.html>
-  WOSHTEP Advisory Board Annual Reports
  - 2008 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/Chswc/Reports/WOSHTEP-2008AdvBrdAnnualReport.pdf>
  - 2007 WOSHTEP Advisory Board Annual Report  
[http://www.dir.ca.gov/Chswc/Reports/WOSHTEP\\_AnnualReport2007.pdf](http://www.dir.ca.gov/Chswc/Reports/WOSHTEP_AnnualReport2007.pdf)
  - 2006 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2006AdvBrdAnnualReport.pdf>
  - 2005 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2005AdvBrdAnnualReport.pdf>
  - 2004 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/WOSHTEPReportNov2004.pdf>
-  Check out:  
<http://www.dir.ca.gov/chswc/WOSHTEP.html> for the WOSHTEP brochure and other WOSHTEP materials.

## PROJECTS AND STUDIES

### OCCUPATIONAL SAFETY AND HEALTH

#### California Partnership for Young Worker Health and Safety

##### **Background**

Over the past five years, an average of 48 teens have died each year in the United States as a result of work-related injuries, and an estimated 160,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

##### **Description**

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the forefront as a nationwide leader in protecting and educating teen workers. Over the past several years, CHSWC has sponsored and convened the California Partnership for Young Worker Health and Safety, established by Assembly Bill (AB) 1599 in September 2000. The Partnership is coordinated by the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, with key support from the Labor Occupational Safety and Health Program (LOSH) at the University of California, Los Angeles (UCLA), and members of the Partnership. In addition to serving California, these efforts have inspired similar activity throughout the United States.

The California Partnership for Young Worker Health and Safety is composed of agencies and organizations dealing with youth employment and education issues, as well as others who can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Partnership is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce.
- Foster awareness and skills in health and safety that will remain with youth throughout their working lives and allow them to take an active role in shaping safe work environments.
- Promote positive, healthy employment for youth.

##### **Status**

During the past year, the Partnership met three times. In addition, subcommittees held conference calls to develop and implement the following activities:

- **Promote the tenth annual California Safe Jobs for Youth Month public awareness campaign in May**, which was established by former Governor Gray Davis's proclamation starting in 1999. This year's public awareness and education activities have included: a teen poster contest (with posters distributed to 1,000 schools and hundreds of other youth-serving organizations); a teen video public service announcement (PSA) contest, with the winning PSA shown in movie theaters in several communities, funded separately by the Department of Industrial Relations (DIR); distribution of a resource kit to over 400 educators and community groups (by 300 downloads from the website and 75 hard copies requested to date); passage of Assembly Concurrent Resolution No. 101, a legislative resolution in support of Safe Jobs for Youth Month; and a media campaign.

In addition, ten youth teams that participated in the Young Worker Leadership Academies (see below) conducted activities in their communities to promote safe jobs for youth. These activities included: community billboards; development and broadcast of a radio PSA; workshops

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## PROJECTS AND STUDIES

conducted by teens at school and in the community for other students and for employers; and school-wide job fairs and lunchtime information-sharing events.

- ***Support and conduct two Young Worker Leadership Academies.*** Young Worker Leadership Academies (YWLAs) were held in Berkeley in January and in Los Angeles in February 2008. The Academies are part of the CHSWC Worker Occupational Safety and Health Training and Education Program (WOSHTEP) and are coordinated by LOHP and LOSH and supported by active participation by Partnership members. Young people from 11 different organizations around the State attended the Academies in 2008. The goals of each Academy were: to teach youth about workplace health and safety and their rights on the job; to help youth start thinking about ways to help ensure that young people do not get hurt on the job; and to provide a forum for these youth to plan for specific actions they could take in their own communities to promote young worker safety. A reunion held in December 2007 by LOSH played a key role in inspiring YWLA alumni to return to the 2008 Academies as youth mentors. The alumni youth led many of the activities at the Academies and developed their own outreach projects, including creating a radio PSA and planning and conducting a community event in Los Angeles.
- ***Develop a guide for conducting a Young Worker Leadership Academy.*** With additional funding from the California Wellness Foundation, LOSH and LOHP staff developed a 64-page guide, *Teens Speak Out for Safety on the Job*, to share the YWLA model with organizations in California, as well as nationwide. This new guide describes the YWLA process and includes all the teaching instructions, handouts, and other materials needed to put on a YWLA. This model will be shared with organizations and agencies around the country through the national Young Worker Safety Resource Center. The guide has already been used by MassCOSH in Massachusetts to plan and conduct its own YWLA.
- ***Identify and implement strategies for using the work permit system as a mechanism for educating teens, parents, and employers about workplace safety and job rights.*** Partnership members are developing a short quiz and other information for teens who apply for work permits. This information-dissemination and quiz will be pilot-tested with the Quick Permit Program used by the majority of school districts.
- ***Support Safe Jobs for Youth Month activities.*** Safe Jobs for Youth Month 2007 got its kick-off on April 20, 2007, with the Teen Employment Scene, a day-long teen-led conference in San Pedro, California. This conference was planned and executed by three graduates of the 2006 YWLA held at UCLA, supported by their adult sponsor, LOSH staff, a mini-grant from the California Partnership among others, and participation by several Partnership members. The three 2006 Academy graduates recruited 19 other YWLA graduates and their teammates from 2006 and 2007 Academies to plan and lead eight workshops with topics ranging from identifying workplace hazards to dealing with sexual harassment and discrimination to addressing workplace stress. Three hundred students from five local high schools attended. Both teachers and students reported that the event was a great success.

During May and June 2008, 13 teams successfully conducted their specific community projects including activities such as: designing informational brochures and fold-out informational business cards to distribute at schools; conducting workshops on job rights for teens at school and in the community; and developing video PSAs and a short interactive video.

- ***Make presentations at several prominent state and national meetings highlighting the innovative approaches being taken in California to protect young workers.*** National annual meetings included those of the Young Worker Safety Resource Center and the American Public Health Association (APHA). With additional funding from federal OSHA, LOHP made presentations on the California Partnership model to budding statewide young worker coalitions in Oregon (sponsored by the University of Oregon) and in New York (sponsored by NYCOSH).

## PROJECTS AND STUDIES

- ***Coordinate the provision of information and resources on young worker health and safety by Partnership members.*** Over the past year, Partnership members with direct access to teachers, employers, and youth jointly reached and served organizations and individuals throughout California with important health and safety information. Partnership members helped with promoting and recruiting for the YWLAs, the poster contest, the video PSA contest, and Safe Jobs for Youth month resources and activities, as well as with providing ongoing links to young worker health and safety information. Information and training were offered in both English and Spanish. In addition, the Partnership provides a space for youth to voice their opinion on young worker health and safety issues. Several youth have made presentations to Partnership members about their issues and concerns and their innovative ideas to help reduce young worker injuries and illnesses.

Partnership accomplishments include:

- More than 2,000 teachers, employers and youth received direct training or presentations.
- Approximately 4,500 teachers, employers and youth received written information, such as the fact sheets for teens and for employers, the Safe Jobs for Youth Month Resource Kit produced by LOHP, or articles in Partnership newsletters, such as that of the California Association of Work Experience Educators (CAWEE), which estimates that its members reach approximately 15,000 students, parents and employers with workplace safety information. In addition, thousands more received information through listserv postings, email announcements, radio and video PSAs, and posters.
- About 70 teachers, employers and youth received direct technical assistance via phone or via the <http://www.dir.ca.gov/youngworker/youngworkersmain.html> website.
- The [www.youngworkers.org](http://www.youngworkers.org) website averaged 330 “hits” per day, for a total of over 121,000 hits during the past year. Although this represents a 20 percent decrease, the number of requests for document downloads increased by 28 percent, to 58,000. The most popular downloads included: the Safe Jobs for Youth Month Resource Kit materials (at least 19,000 for current and past years’ materials); the fact sheets for youth (3,400) and employers (1,900); and the poster contest materials.
- At least nine newsletter, newspaper, or web-based articles were published, in addition to at least 4 radio spots.
- Health and safety information continued to be integrated into ongoing statewide activities of many of the partners, including regular in-service training for work experience educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the <http://www.youngworkers.org> website.
- At least 12 newsletter, newspaper, or web-based articles were published, in addition to at least four radio and television spots.
- Health and safety information continued to be integrated into ongoing statewide activities of many of the partners, including regular in-service training for work experience and WorkAbility educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the <http://www.youngworkers.org> website.

In the coming year, priorities are to:

- Strengthen and expand youth involvement by holding two more YWLAs and exploring funding opportunities to hold YWLA reunions and other youth-led events in both Northern and Southern California.

## PROJECTS AND STUDIES

- Continue to strengthen activities of Partnership members, with a focus on outreach and information tools for the employer community, including the small business restaurant safety training materials and the new health and safety resources for small businesses across industries which employ youth.
- Expand the membership of the Partnership to include greater representation from employers and youth organizations.
- Continue to share the California Partnership for Young Worker Health and Safety model with other states and assist them to replicate this model.

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## PROJECTS AND STUDIES

*For further information...*



Check out: <http://www.youngworkers.org> for information for teens, teen workers in agriculture, employers, parents, and educators.



UCLA-LOSH Youth Project. <http://www.losch.udcla.edu>.



Keeping California's Youth Safe on the Job – Updated Recommendations of the California Partnership for Young Worker Health and Safety, 2004. <http://socrates.bekeley.edu/-safejobs/downloads/pdf/2004Recommendations904.pdf>.

**Status:** Ongoing.

**OCCUPATIONAL SAFETY AND HEALTH**

**Disability Retirement Benefits for Public Safety Officers**

***Background***

The provision of public safety is one of the most important responsibilities of government. Workers charged with protecting the public routinely put their lives and well-being at risk. It is documented that, in general, public safety employees tend to have much higher-than-average rates of work-related injuries and illnesses, both fatal and non-fatal, as compared to other sectors. Because public safety occupations inherently entail significant risk and because of the social importance of the services these employees provide, public safety employees are usually rewarded with comparatively higher compensation in the event of a work-related injury.

The high incidence and high cost of injuries sustained by public safety employees raise a number of important policy questions. For instance, do workers' compensation and disability retirement benefits provided to public safety employees adequately compensate them for disabling injuries? Could specific safety interventions reduce the frequency of injuries to public safety employees and thereby lower the cost of providing workers' compensation and disability retirement benefits to these workers? What types of injuries do public safety employees suffer and at what ages, as compared to other public employees?

***Description***

The high rate of injury and disability sustained by vital public safety employees, particularly police and firefighters, is of great concern to the workers' compensation community. In October 2004, Assembly Members Juan Vargas and Rick Keene requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of public sector injury prevention. In particular, they requested a comprehensive evaluation and recommendations on effective public safety employee injury and illness prevention measures.

In response to the above bi-partisan request, CHSWC contracted with RAND in September 2005 to conduct a study that will assist the legislature in its goals to minimize injuries incurred by public safety employees and provide adequate workers' compensation and disability benefits to those who are injured. The study addresses the following topics:

- Describe the incidence and types of injuries suffered by public safety employees and assess how the distribution of these injuries differs from that of other public (and potentially private) employees.
- Explore which aspects of public safety employment lead to the greatest injury and disability rates and whether specific interventions could reduce the risk of injury among those workers.
- Estimate the impact of disability on earnings of public safety employees and assess the adequacy of workers' compensation and disability benefits provided to these injured workers.
- Examine the extent to which disability retirements for public safety employees have changed over time and what factors have contributed to any observed trends.

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*RAND*

Tom LaTourrette, Ph.D.  
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Irina Nemirovsky

## PROJECTS AND STUDIES

### ***Findings***

RAND has conducted in-depth discussions with members of eight California agencies covering fire/emergency-management services, law enforcement, and corrections. The key findings from these discussions included:

- There is a need for better surveillance of injury data, particularly for injuries to law enforcement and emergency medical personnel.
- The design and targeting of safety and health promotion efforts could also be improved with better monitoring of the types of situations and causes of injury that lead to the most severe and disabling injuries.
- There is a need to reduce strains, sprains and musculoskeletal disorders among safety employees, which are by far the leading cause of nonfatal injuries.
- Training, increased information analysis and sharing, strong safety messages from department leadership, and improvements to protective equipment were areas identified as good tools for improving safety of public safety employees.
- Both firefighters and police officers become more susceptible to disability as they age. Policies designed to reduce the rate of disability retirement may be most effective if focused on either preventing injuries among older safety employees or taking steps to alleviate the impact of injuries on their ability to work.

### ***Status***

A joint CHSWC/NIOSH report was completed in 2008.

### OCCUPATIONAL SAFETY AND HEALTH

#### ISO 9001

##### **Background**

There are a number of voluntary certifications that might affect occupational health and safety such as: the United States OSHA's Voluntary Protection Program (VPP) and the Strategic Partnership Program (OSPP); the United States EPA's Audit Policy; the International Standards Organization (ISO) 14001 Environmental Management Standard; and the ISO 9001 Quality Management Standard, the most widely known certification. Thousands of California workplaces are certified in ISO 9001, which means that products coming out of these workplaces have been certified to use and improve standard procedures. There have been evaluations of how ISO 9001 affects companies, but little evaluation of how this standard affects workers.

##### **Description**

The purpose of this study was to evaluate the extent to which ISO 9001 affects occupational health and safety records and workers' compensation costs. The study also evaluated the extent to which such voluntary management programs attract facilities with better-than-average or worse-than-average occupational health and safety records and workers' compensation costs for the purpose of assuring the safety and health of California employees. Data were provided by the Workers' Compensation Insurance Rating Bureau (WCIRB). This is also the first rigorous study to evaluate the effect of ISO 9001 on other employee outcomes such as employment and earnings.

##### **Findings**

Single-plant California employers were matched to firms in the same industry with similar sales, employment, injury rates, and region. The study found that:

- ISO adopters had far lower organizational death rates than matched firms within their industries.
- Sales and employment grew substantially more rapidly post certification at ISO 9001 adopting firms than at matched firms.
- Total payroll and (to a lesser extent) annual earnings per employee grew substantially more rapidly post certification at ISO 9001 adopting firms than at matched firms.
- ISO 9001 adopters already had slightly lower than average injury costs at the time of adoption, and the study found no evidence that this gap widened or narrowed after adoption. Adopters were more likely to report no injuries for workers' compensation at all in the years following adoption. When comparing pairs of adopters and matched comparison firms that each had a positive number of injuries, no differences in their number of injuries were found.

**Status:** Completed.

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**OCCUPATIONAL SAFETY AND HEALTH**

**Experimental Evidence on the Causal Effect of Cal/OSHA Inspections on Workplace Employees and Employers**

***Background***

Little is known about the relationship between health and safety inspections, voluntary programs and consultations, and improvements in workplace health and safety and overall business and employee success over time. In fact, OSHA is considered by some a controversial agency in large part because of doubts about its effectiveness in reducing workplace injuries and illnesses, and in part because of concerns about the cost of OSHA inspections and other enforcement activities. This project seeks to evaluate Cal/OSHA's Targeted Inspections, Voluntary Programs, and Consultations. The Commission on Health and Safety and Workers' Compensation (CHSWC) is working with the University of California (UC), Berkeley and Harvard University researchers to analyze these relationships and assist in obtaining data.

***Objectives and Scope of Study***

This research project will evaluate the extent to which Cal/OSHA's inspections (particularly randomized inspections in high hazard industries), voluntary programs, and consultations affect organizational and employee outcomes. Outcomes to be analyzed include injury rates, worker's compensation costs, company survival, sales, employment, and wages. This study will use the randomized nature of some Cal/OSHA inspections to provide the best estimates of the causal effects of Cal/OSHA inspections on workers and employers.

Studies will individually examine:

- Randomized inspections.
- Voluntary programs (partnership programs).
- Consultations based on high experience modification (Ex-Mod) rates.

The studies will link data from Cal/OSHA inspections Institute for the Management of Information Systems (IMIS), Dun & Bradstreet (D&B) data on businesses, and Workers' Compensation Insurance Rating Bureau (WCIRB) data on injury rates and payroll from 1993 to 2006 to give a picture of a range of performance outcomes over time. The results should also help Cal/OSHA improve how it targets random inspections, pointing out which inspections had the largest benefits to workers. More broadly, these results will be of substantial interest to policymakers, employers, and workers in California.

***Status:*** Ongoing.

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## PROJECTS AND STUDIES

### OCCUPATIONAL SAFETY AND HEALTH

#### Schools Injury and Illness Prevention Program Project

##### **Background**

Per the mandate set forth in the Labor Code, the Commission on Health and Safety and Workers' Compensation (CHSWC) is to assist inner-city schools or any school or district in establishing effective occupational injury and illness prevention programs (IIPPs). Priority shall be given to schools or districts with high risk.

##### **Description**

CHSWC has established a Schools IIPP model program, California's School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices and resources. The program will include training and resources to enable schools or school districts to develop or improve IIPPs and to make other health and safety improvements that will help protect school or school district employees from injuries and illnesses on the job. The target audience will focus on K-12 schools and school districts at high risk of occupational injury and illness, including, but not limited to, the Youth Authority overseen by the California Department of Corrections and Rehabilitation (CDCR).

On June 27, 2008, CHSWC hosted a roundtable discussion that brought together representatives from schools and school districts, the Governor's Office of Homeland Security, labor, and school-related agencies and organizations in California. (See list of participants on the next page.) The objectives of the meeting were to determine how best to structure and implement the model program including a training program for schools or schools districts with the priority training going to schools or school districts with high incidence rates and a pilot with schools from around the State.

The program will include a needs assessment to determine the types of training and resources, development of materials and resources, implementation with a pilot group, and evaluation. A final report will detail successful IIPP improvements achieved, barriers encountered, and recommendations for the future. Further development of the model program would include expanding partnerships with key constituents throughout the State, expanding the target population statewide, developing a network of expert trainers, ensuring that measures of accountability are applied, and institutionalizing the program by identifying continuing health and safety education opportunities for schools.

**Status:** In process.

##### ***Schools Injury and Illness Prevention Program Project Team***

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## PROJECTS AND STUDIES

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## OCCUPATIONAL SAFETY AND HEALTH

### Workplace Wellness: How to Address Both Occupational and Lifestyle Issues on the Job

#### Background

Integration of wellness and occupational health and safety has become a key focus of efforts by employers of large, medium and small-sized businesses and labor. Efforts to develop an integrated approach to health promotion and occupational health and safety programs have focused on research and public health literature, as well as best practices of wellness programs implemented by employers.

#### Description

On July 16, 2008, the Commission on Health and Safety and Workers' Compensation (CHSWC) hosted a Workplace Wellness Roundtable facilitated by the University of California Berkeley's Labor Occupational Health Program (LOHP). Participants included representatives from employers of large, medium and small-sized businesses, labor, research organizations, and state agencies. (See list of participants on the next page.) The purpose of the Workplace Wellness Roundtable was to begin a dialogue about strategic approaches, both short-term and long-term, to integrating workplace wellness and occupational health and safety programs in California. Attendees were encouraged to share experience with workplace wellness initiatives and programs and to reflect on how these ideas relate to their own organizations.

#### Objectives

The objectives for the Roundtable were to:

- Develop a general understanding of what constitutes an integrated approach to health promotion and occupational health and safety programs.
- Explore barriers to integration of workplace health promotion and workplace health and safety programs.
- Discuss strategies for overcoming challenges to integration of programs.
- Identify strategies and resources for promoting more and better programs that address workplace health in a holistic manner for employers of large, medium and small-sized businesses.

**Status:** Ongoing.

#### Wellness Workplace Project Team

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## PROJECTS AND STUDIES

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## PROJECTS AND STUDIES

### **LIST OF PROJECTS AND STUDIES**

#### **I. PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES**

##### **Permanent Disability Schedule Analysis**

*Status:* Completed

*CHSWC Reports:*

Memorandum to Christine Baker, Executive Officer of CHSWC regarding "Analysis of ratings under the new PD schedule, through June 2007," August 23, 2007

[http://www.dir.ca.gov/chswc/Reports/memo\\_on\\_new\\_ratings\\_through\\_june\\_30\\_07\\_revised\\_aug\\_9.pdf](http://www.dir.ca.gov/chswc/Reports/memo_on_new_ratings_through_june_30_07_revised_aug_9.pdf)

Memorandum to Christine Baker, Executive Officer of CHSWC regarding "Analysis of ratings under the new PD schedule, through January 2007", February 23, 2007

<http://www.dir.ca.gov/CHSWC/Reports/MemoOnRatingsThruJan2007.pdf>

Permanent Disability Schedule Analysis (2006)

<http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf>

##### **Impact of Changes to the Temporary Disability Benefits**

*Status:* In Process

*CHSWC Memorandum:*

Evaluate and Identify Impact of Changes to the Temporary Disability Benefit (2007)

[http://www.dir.ca.gov/CHSWC/Reports/Memo\\_On\\_TD\\_Benefits\\_Beyond\\_2Years.pdf](http://www.dir.ca.gov/CHSWC/Reports/Memo_On_TD_Benefits_Beyond_2Years.pdf)

*For further information...*

See the project synopsis in the Projects and Studies section.

##### **Initial Wage Loss Analyses**

*Status:* Completed

*CHSWC Reports:*

Compensating Permanent Workplace Injuries: A Study of the California System (RAND, 1998)

[http://www.rand.org/pubs/monograph\\_reports/MR920/](http://www.rand.org/pubs/monograph_reports/MR920/)

Findings and Recommendations on California's Permanent Partial Disability System - Executive Summary (RAND, 1997)

<http://www.dir.ca.gov/CHSWC/Reports/PPDFindingsAndRecommendations.pdf>

##### **Enhancement of Wage Loss Analysis – Private Self-Insured Employers**

*Status:* Completed

*CHSWC Report:*

Permanent Disability at Private Self-Insured Firms: A Study of Earnings Loss, Replacement, and Return to Work for Workers' Compensation Claimants (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/PD-Study.pdf>

##### **Enhancement of Wage Loss Analysis – Public Self-insured Employers**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

##### **Impact of Local Economic Conditions on Wage Loss**

*Status:* Completed

*CHSWC Report:*

Trends in Earnings Loss from Disabling Workplace Injuries in California – The Role of Economic Conditions (RAND, 2001)

<http://www.dir.ca.gov/CHSWC/Reports/TrendsInEarningsLoss-EcoCondition.pdf>

## PROJECTS AND STUDIES

### **PERMANENT DISABILITY AND TEMPORARY DISABILITY STUDIES (continued)**

#### **Permanent Disability Rating Tool**

*Status:* Completed

*CHSWC Reports:*

An Evaluation of California's Permanent Disability Rating System, Summary (RAND, 2005)

[http://www.dir.ca.gov/CHSWC/Reports/Eval\\_Of\\_CA\\_PD\\_System\\_Summary.pdf](http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System_Summary.pdf)

An Evaluation of California's Permanent Disability Rating System, Full Report (RAND, 2005)

[http://www.dir.ca.gov/CHSWC/Reports/Eval\\_Of\\_CA\\_PD\\_System.pdf](http://www.dir.ca.gov/CHSWC/Reports/Eval_Of_CA_PD_System.pdf)

Evaluation of California's Permanent Disability Rating Schedule: Interim Report (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/PermanentDisabilityRatingSchedule-InterimReport.pdf>

#### **Apportionment**

*Status:* Completed

*CHSWC Reports:*

Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment (April 2007)

[http://www.dir.ca.gov/chswc/CHSWC\\_ApportionmentPaper.pdf](http://www.dir.ca.gov/chswc/CHSWC_ApportionmentPaper.pdf)

Understanding the Effect of SB 899 (Stats 2004, Chap 34) on the Law of Apportionment (October 2005)

<http://www.dir.ca.gov/CHSWC/FinalApportionmentPaper.pdf>

Background Paper on Causation and Apportionment, May 2004

[http://www.dir.ca.gov/CHSWC/Causation\\_and\\_Apportionment\\_Final\\_May\\_2004.pdf](http://www.dir.ca.gov/CHSWC/Causation_and_Apportionment_Final_May_2004.pdf)

## **II. RETURN TO WORK**

#### **Impact of Recent Return-to-Work Reforms**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Return-to-Work Roundtable**

*Status:* Completed

*CHSWC Report:*

Return-to-Work Roundtable, Summary of November 17, 2006

<http://www.dir.ca.gov/CHSWC/Reports/ReturnToWorkRoundtable-Final.pdf>

#### **Assembly Bill 1987 and Return to Work**

*Status:* Completed

*CHSWC Report:*

AB 1987 and Return-to-Work Incentives and Alternatives (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/RTW-AB1987.pdf>

#### **Best Practices Encouraging Return to Work**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Review of Literature on Modified Work**

*Status:* Completed

*CHSWC Report:*

Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? (1997)

[http://www.dir.ca.gov/CHSWC/Modified\\_Work\\_Krause.html](http://www.dir.ca.gov/CHSWC/Modified_Work_Krause.html)

## PROJECTS AND STUDIES

### **RETURN TO WORK (continued)**

#### **Policies and Strategies to Help Injured Workers Return to Sustained Employment**

*Status:* Completed

*CHSWC Report:*

Return to Work in California: Listening to Stakeholders' Voices (July 2001)

<http://www.dir.ca.gov/CHSWC/RTWinCA0701.html>

#### **Primary Treating Physician Effectiveness in Return to Work (RTW) After Low-Back Injuries**

*Status:* First phase: Completed

Second phase: In process

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Report:*

Physical Workplace Factors and Return to Work After Compensated Low-Back Injury: A Disability Phase-Specific Analysis (JOEM, 2000)

#### **Predictors and Measures of Return to Work**

*Status:* Completed

*CHSWC Report:*

Determinants of Duration of Disability and Return to Work After Work-Related Injury and Illness:

Challenges for Future Research (2001)

<http://www.dir.ca.gov/chswc/Determinants.pdf>

### **III. WORKERS' COMPENSATION REFORMS**

#### **Evaluation of System Changes**

*Status:* In process

*CHSWC Summary:*

CHSWC Summary of System Changes in California Workers' Compensation (2008)

<http://www.dir.ca.gov/Chswc/Reports/CHSWCRptonSummarySystemChang>

#### **Assembly Bill 749 Analysis**

*Status:* Completed

*CHSWC Summaries:*

CHSWC and AB 749 as Amended (October 2002)

<http://www.dir.ca.gov/CHSWC/749Report/AB749asamended112202.html>

CHSWC and AB 749 (February 2002)

<http://www.dir.ca.gov/CHSWC/ab749.html>

#### **Assembly Bill 227 and Senate Bill 228 Analysis**

*Status:* Completed

*CHSWC Summary:*

Reforms of 2003, AB 227 (October 2003)

[http://www.dir.ca.gov/CHSWC/Reports/Reforms\\_of\\_2003-AB227.pdf](http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-AB227.pdf)

Reforms of 2003, SB 228 (October 2003)

[http://www.dir.ca.gov/CHSWC/Reports/Reforms\\_of\\_2003-SB228.pdf](http://www.dir.ca.gov/CHSWC/Reports/Reforms_of_2003-SB228.pdf)

#### **Senate Bill 899 Analysis**

*Status:* Completed

*CHSWC Summaries:*

Summary of Workers' Compensation Reform Legislation (2004)

<http://www.dir.ca.gov/CHSWC/Summary-of-SB899.doc>

Section-by-Section Review of SB 899 (2004)

<http://www.dir.ca.gov/CHSWC/Section-by-section-Review-of-SB899.doc>

## PROJECTS AND STUDIES

### **WORKERS' COMPENSATION REFORM (continued)**

#### **Evaluation of the Division of Workers' Compensation (DWC) Audit Function (Special Study at the Request of the Legislature)**

*Status:* Completed

*CHSWC Reports:*

CHSWC Report on the Division of Workers' Compensation Audit Function (1998)

<http://www.dir.ca.gov/CHSWC/FinalAuditReport.html>

Executive Summary (1998)

<http://www.dir.ca.gov/CHSWC/AuditSummaryCover.html>

#### **Medical-Legal Study**

*Status:* Ongoing

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Reports:*

Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey (1997)

[http://www.dir.ca.gov/CHSWC/DisabilityReport/data\\_and\\_methodology.html](http://www.dir.ca.gov/CHSWC/DisabilityReport/data_and_methodology.html)

Executive Summary (1997)

<http://www.dir.ca.gov/CHSWC/DisabilitySummary/execsummary.html>

#### **Vocational Rehabilitation Study**

*Status:* In process

*For further information...*

See Best Practices Encouraging Return to Work in project synopsis section.

*CHSWC Reports:*

Vocational Rehabilitation Reform Evaluation (March 2000)

<http://www.dir.ca.gov/CHSWC/Vocrehabreform2000.pdf>

Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms (August 1997)

<http://www.dir.ca.gov/CHSWC/rehab/rehabcover.html>

#### **Evaluation of Treating Physician Reports and Presumption**

*Status:* Completed

*CHSWC Report:*

Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician (1999)

<http://www.dir.ca.gov/CHSWC/Report99/TPhysician.html>

#### **Update of Treating Physician Reports and Presumption Study**

*Status:* Completed

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Report:*

Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice? (2002)

<http://www.dir.ca.gov/CHSWC/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html>



## PROJECTS AND STUDIES

### **WORKERS' COMPENSATION REFORM (continued)**

#### **Evaluation of Labor Code Section 5814 Penalty Provisions**

*Status:* Completed

*CHSWC Reports:*

Issue Paper on Labor Code Section 5814 (April 2000)

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

Background Paper on Labor Code Section 5814 (March 1999)

<http://www.dir.ca.gov/CHSWC/LC5814.htm>

#### **“Baseball Arbitration” Provisions of Labor Code Section 4065**

*Status:* Completed

*CHSWC Report:*

Preliminary Evidence on the Implementation of ‘Baseball Arbitration’ (November 1999)

[http://www.dir.ca.gov/CHSWC/Baseballarbfinal %27rptcover.htm](http://www.dir.ca.gov/CHSWC/Baseballarbfinal%27rptcover.htm)

#### **CHSWC Response to Questions from the Assembly Committee on Insurance**

*Status:* Completed

*CHSWC Report:*

CHSWC Response to Questions from the Assembly Committee on Insurance (2001)

#### **Cost Trends 1985-2005**

*Status:* Completed

*NASI Brief:*

Workers’ Compensation in California and in the Nation: Benefit and Employer Cost Trends, 1989-2005, (2008)

<http://www.dir.ca.gov/chswc/Reports/CAWorkers'CompensationBrief2008.pdf>

#### **Temporary Disability Payments Beyond Current Two Years Commencement of Benefit Payment**

*Status:* Completed

*CHSWC Memorandum:*

Impact of relaxing restrictions on eligibility for temporary disability payments beyond the current two years from commencement of benefit payment, January 26, 2007

[http://www.dir.ca.gov/CHSWC/Reports/Memo\\_On\\_TD\\_Benefits\\_Beyond\\_2Years.pdf](http://www.dir.ca.gov/CHSWC/Reports/Memo_On_TD_Benefits_Beyond_2Years.pdf)

## **IV. OCCUPATIONAL SAFETY AND HEALTH**

#### **Research Agenda for Improving Workplace Health and Safety in California**

*Status:* Report Completed. Individual Studies ongoing.

*CHSWC Report:*

Research Agenda for Improving Workplace Health and Safety in California, (February 2008)

<http://www.dir.ca.gov/CHSWC/reports/CHSWCReportHealthandSafetyResearchAgendaFeb2008.pdf>

#### **California Occupational Safety and Health Programs**

*Status:* Completed

*CHSWC Report:*

Background Report on California Occupational Safety and Health Programs, (February 2008)

<http://www.dir.ca.gov/CHSWC/reports/CHSWCBackgroundReportonCaliforniaHealthsafetyProgramsFeb2008.pdf>

## PROJECTS AND STUDIES

### **OCCUPATIONAL SAFETY AND HEALTH (continued)**

#### **ISO 9001**

*Status:* Completed

*CHSWC Report:*

Quality Management and Job Quality: How the ISO 9001 Standard for Quality Management Systems Affects Employees and Employers (August 2008)

[http://www.dir.ca.gov/chswc/Reports/ISO\\_9001\\_2008\\_August.pdf](http://www.dir.ca.gov/chswc/Reports/ISO_9001_2008_August.pdf)

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **The Disability Retirement Benefits for Public Safety Officers**

*Status:* In process

*For further information*

See the project synopsis in the Projects and Studies section.

#### **Summary of the June 29, 2008 Schools Injury and Illness Prevention Program Roundtable**

*Status:* Completed

*CHSWC Report:*

Summary of the June 29, 2008 Schools Injury and Illness Prevention Program Roundtable

[http://www.dir.ca.gov/chswc/Reports/CHSWC\\_SummarySchoolsInjuryIllnessPreventionProgramRoundtable.pdf](http://www.dir.ca.gov/chswc/Reports/CHSWC_SummarySchoolsInjuryIllnessPreventionProgramRoundtable.pdf)

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **The Relationship Between Employer Health-Promotion Measures and Workplace Injury and Illness Prevention: A CHSWC-NIOSH Study**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Project: Worker Occupational Safety and Health Training and Education Program**

*Status:* Ongoing

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Reports and Materials:*

WOSHTEP Brochure

[http://www.dir.ca.gov/CHSWC/brochure\\_final-2-06-06.pdf](http://www.dir.ca.gov/CHSWC/brochure_final-2-06-06.pdf)

State, National and International Safety and Health Training Program Resources (2003)

<http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html>

Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List

<http://www.dir.ca.gov/CHSWC/MultilingualGuide/MultilingualGuideMain.html>

Heat Hazards in Agriculture: A Guide for Employers to Carry out Tailgate Training for Workers (2008)

[http://www.dir.ca.gov/chswc/Reports/CHSWC\\_HeatAgricultureEnglish.pdf](http://www.dir.ca.gov/chswc/Reports/CHSWC_HeatAgricultureEnglish.pdf)

[http://www.dir.ca.gov/chswc/Reports/CHSWC\\_HeatAgricultureSpanish.pdf](http://www.dir.ca.gov/chswc/Reports/CHSWC_HeatAgricultureSpanish.pdf)

Health and Safety Training for Owners and Managers of Small Restaurants

[http://www.dir.ca.gov/chswc/English\\_Trainers\\_Guide.pdf](http://www.dir.ca.gov/chswc/English_Trainers_Guide.pdf) (English)

[http://www.dir.ca.gov/chswc/Spanish\\_Trainers\\_Guide.pdf](http://www.dir.ca.gov/chswc/Spanish_Trainers_Guide.pdf) (Spanish)

Small Business Health and Safety Materials

<http://www.dir.ca.gov/chswc/woshtep.html>

Summary of the July 16, 2008 Workplace Wellness Roundtable

[http://www.dir.ca.gov/chswc/Reports/CHSWC\\_SummaryWorkplaceWellnessRoundtable.pdf](http://www.dir.ca.gov/chswc/Reports/CHSWC_SummaryWorkplaceWellnessRoundtable.pdf)

Teens Speak Out for Safety on the Job: Lessons from the Young Worker Leadership Academy

<http://www.youngworkers.org/downloads/pdf/TeensSpeakOut.pdf>

## PROJECTS AND STUDIES

### **OCCUPATIONAL SAFETY AND HEALTH (continued)**

2008 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/Chswc/Reports/WOSHTEP-2008AdvBrdAnnualReport.pdf>  
2007 WOSHTEP Advisory Board Annual Report  
[http://www.dir.ca.gov/Chswc/Reports/WOSHTEP\\_AnnualReport2007.pdf](http://www.dir.ca.gov/Chswc/Reports/WOSHTEP_AnnualReport2007.pdf)  
2006 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2006AdvBrdAnnualReport.pdf>  
2005 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/Reports/WOSHTEP-2005AdvBrdAnnualReport.pdf>  
2004 WOSHTEP Advisory Board Annual Report  
<http://www.dir.ca.gov/CHSWC/WOSHTEPReportNov2004.pdf>

#### **California Partnership for Young Worker Health and Safety**

*Status:* Ongoing

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Report:*

Protecting and Educating Young Workers: Report of the California Study Group on Young Worker Health and Safety (1998)

<http://www.dir.ca.gov/chswc/studgrp.html>

[www.youngworkers.org](http://www.youngworkers.org) for the California Partnership for Young Worker Health and Safety, providing information for teens, teen workers in agriculture, employers, and educators

<http://www.dir.ca.gov/chswc/TrainingProgramsResources/Surveycover.html>

#### **Project: Child Labor Photography Exhibit and Teen Workshops**

*Status:* Presented in 2004, 2005, and 2006

### **V. WORKERS' COMPENSATION ADMINISTRATION**

#### **Selected Indicators in Workers' Compensation**

*Status:* Completed

*CHSWC Reports:*

Selected Indicators in Workers' Compensation: A Report Card for California (December 2008)

[http://www.dir.ca.gov/CHSWC/Reports/WC\\_ReportCard\\_Dec2008.pdf](http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2008.pdf)

Selected Indicators in Workers' Compensation: A Report Card for Californians (December 2007)

[http://www.dir.ca.gov/CHSWC/Reports/WC\\_ReportCard\\_Dec2007.pdf](http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2007.pdf)

Selected Indicators in Workers' Compensation: A Report Card for Californians (December 2006)

[http://www.dir.ca.gov/CHSWC/Reports/WC\\_ReportCard\\_Dec2006.pdf](http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2006.pdf)

Selected Indicators in Workers' Compensation: A Report Card for Californians (December 2005)

[http://www.dir.ca.gov/CHSWC/Reports/WC\\_ReportCard\\_Dec2005.pdf](http://www.dir.ca.gov/CHSWC/Reports/WC_ReportCard_Dec2005.pdf)

#### **Workers' Compensation Court Management and Judicial Function Study**

*Status:* Completed

*CHSWC Reports:*

Improving Dispute Resolution for California's Injured Workers, Summary (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution-Summary.pdf>

Improving Dispute Resolution for California's Injured Workers, Full Report (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/ImprovingDisputeResolution.pdf>

## PROJECTS AND STUDIES

### **WORKERS' COMPENSATION ADMINISTRATION (continued)**

#### **Court Technology Project**

*Status: Completed*

*CHSWC Reports:*

Briefing on the Use of Technology in the Courts (2003)

Feasibility Study Report (Gartner, 2003)

#### **Local Forms and Procedures – Labor Code Section 5500.3**

*Status: Completed*

*For further information...*

CHSWC 1998-99 Annual Report: Projects and Studies Section

#### **Profile of Division of Workers' Compensation (DWC) District Office Operations**

*Status: Completed*

*For further information...*

CHSWC 1997-98 Annual Report: Program Oversight Section

#### **CHSWC Roundtable on Division of Workers' Compensation (DWC) Lien Workload**

*Status: Completed*

*For further information...*

CHSWC 1998-99 Annual Report: Projects and Studies Section

### **VI. INFORMATION FOR WORKERS AND EMPLOYERS**

#### **Medical Booklet and Fact Sheet**

*Status: Completed*

*CHSWC Booklet and Fact Sheet:*

The Basics About Medical Care for Injured Workers (2006)

<http://www.dir.ca.gov/CHSWC/Reports/MedicalCareFactsheet.pdf>

Getting Appropriate Medical Care for Your Injury (2006)

<http://www.dir.ca.gov/CHSWC/Reports/MedicalCareBooklet.pdf>

#### **Benefit Notices Simplification Project**

*Status: Completed*

*CHSWC Reports:*

Project to Improve Laws and Regulations Governing Information for Workers

Recommendations: Information for Injured Workers (May 2000)

<http://www.dir.ca.gov/CHSWC/IWCover.html>

Navigating the California Workers' Compensation System: The Injured Workers' Experience (July 1996)

<http://www.dir.ca.gov/CHSWC/navigate/navigate.html>

#### **Workers' Compensation Information Prototype Materials**

*Status: Completed*

*CHSWC Report, Fact Sheets and Video:*

Project to Augment, Evaluate, and Encourage Distribution of the Prototype Educational Materials for Workers (2000)

Workers' Compensation Fact Sheets and a video, "Introduction to Workers' Compensation"

<http://www.dir.ca.gov/chswc/EduMaterials.html>

## PROJECTS AND STUDIES

### **INFORMATION FOR WORKERS AND EMPLOYERS (continued)**

#### **Consolidating and Coordinating Information for Injured Workers**

*Status:* English and Spanish versions completed.

*CHSWC Reports:*

Workers' Compensation in California: A Guidebook for Injured Workers, Third Edition, November 2006

<http://www.dir.ca.gov/CHSWC/Reports/WorkersCompGuidebook-3rdEd.pdf> (English)

Workers' Compensation in California: A Guidebook for Injured Workers, Third Edition, November 2006

<http://www.dir.ca.gov/CHSWC/Reports/GuidebookSpanishforInjuredWorkers2006.pdf> (Spanish)

#### **Workers' Compensation Medical Care in California Fact Sheets**

*Status:* Completed

*Fact Sheets:*

Workers' Compensation Medical Care in California: Quality of Care, Costs, Access to Care, System Overview (2003)

[http://www.dir.ca.gov/chswc/CHSWC\\_WCFactSheets.htm](http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm)

#### **Workers' Compensation Carve-Out Booklet**

*Status:* Completed

*CHSWC Report:*

How to Create a Workers' Compensation Carve-Out in California: Practical Advice for Unions and Employers (2006)

<http://www.dir.ca.gov/CHSWC/carve-out1.pdf>

#### **Workers' Compensation Carve-Out Guidebook**

*Status:* Completed

*CHSWC Report:*

Carve-Outs: A Guidebook for Unions and Employers in Workers' Compensation (May 2004)

[www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc](http://www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc)

#### **Carve-Outs – Alternative Workers' Compensation Systems**

*Status:* Completed

*CHSWC Report:*

Carve-outs in Workers' Compensation: An Analysis of Experience in the California Construction Industry (September 1999)

<http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html>

## **VII. MEDICAL CARE**

#### **Medical Study of Impact of Recent Reforms**

*Status:* In process

*CHSWC Report:*

Working Paper: Pay-for-Performance in California's Workers' Compensation Medical Treatment System, RAND, August 2007

[http://www.dir.ca.gov/chswc/Reports/Pay\\_for\\_Performance\\_Report\\_2007.pdf](http://www.dir.ca.gov/chswc/Reports/Pay_for_Performance_Report_2007.pdf)

#### **Medical Care Provided California's Injured Workers**

*Status:* Completed

*CHSWC Report:*

Medical Care Provided California's Injured Workers: An Overview of the Issues, RAND (September 2007)

[http://www.dir.ca.gov/chswc/CHSWC\\_MedCareProvidedCAIW.pdf](http://www.dir.ca.gov/chswc/CHSWC_MedCareProvidedCAIW.pdf)

## PROJECTS AND STUDIES

### **MEDICAL CARE (continued)**

#### **Quality-of-Care Indicators: A Demonstration Project**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Barriers to Occupational Health Services for Low-Wage Workers in California**

*Status:* Completed

*CHSWC Report:*

Barriers to Occupational Health Services for Low-Wage Workers in California (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/Barriers-To-OHS.pdf>

#### **CHSWC Study on Spinal Surgery Second-Opinion Process**

*Status:* Completed

*CHSWC Report:*

Report and Recommendations on the Spinal Surgery Second-Opinion Process (April 2007)

<http://www.dir.ca.gov/chswc/Reports/SSSOP-Final.pdf>

#### **State Disability Insurance Integration Project**

*Status:* In process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Medical Treatment Study**

*Status:* In peer review

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **CHSWC Study on Medical Treatment Protocols**

*Status:* Completed

*CHSWC Reports:*

Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, April 2006)

[http://www.dir.ca.gov/CHSWC/Reports/Evaluating\\_med\\_tx\\_guideline.pdf](http://www.dir.ca.gov/CHSWC/Reports/Evaluating_med_tx_guideline.pdf) Full Report

Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, April 2006)

[http://www.dir.ca.gov/CHSWC/Reports/Eval\\_med\\_tx\\_guideline\\_summary.pdf](http://www.dir.ca.gov/CHSWC/Reports/Eval_med_tx_guideline_summary.pdf) Summary

Updated and Revised CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (April 2006)

[http://www.dir.ca.gov/CHSWC/Reports/Medical\\_Treatment\\_Recommendations\\_Final\\_040606.pdf](http://www.dir.ca.gov/CHSWC/Reports/Medical_Treatment_Recommendations_Final_040606.pdf)

CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)

[http://www.dir.ca.gov/chswc/CHSWC\\_Med%20Treat\\_Nov2004.pdf](http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.pdf)

Estimating the Range of Savings from Introduction of Guidelines Including ACOEM (revised, Frank Neuhauser, October 2003)

<http://www.dir.ca.gov/CHSWC/ACOEMGuideline.pdf>

#### **Health Care Organizations**

*Status:* Completed

*CHSWC Staff Report:*

A Report on Health Care Organizations (HCOs) in Workers' Compensation (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/HCO-WC-Apr2006.pdf>

## PROJECTS AND STUDIES

### **MEDICAL CARE (continued)**

#### **Repackaged Drugs Study**

*Status:* Completed

*CHSWC Issue Paper:*

Paying for Repackaged Drugs Under the California Workers' Compensation Official Medical Fee Schedule (May 2005)

[http://www.dir.ca.gov/CHSWC/WR260-1050525\\_Repack.pdf](http://www.dir.ca.gov/CHSWC/WR260-1050525_Repack.pdf)

#### **Pharmacy Reporting Impact Study**

*Status:* Completed

*CHSWC Report:*

Impact of Physician-Dispensing of Repackaged Drugs on California Workers' Compensation, Employers' Cost, and Workers' Access to Quality Care (July 2006)

<http://www.dir.ca.gov/CHSWC/Reports/Physician-Dispensend-Pharmaceuticals.pdf>

#### **Workers' Compensation Pharmaceutical Costs Study**

*Status:* Completed

*CHSWC Reports:*

Study of the Cost of Pharmaceuticals in Workers' Compensation (June 2000)

<http://www.dir.ca.gov/CHSWC/Pharmacy/pharmacover.html>

Executive Summary (June 2000)

<http://www.dir.ca.gov/CHSWC/Pharmacy/ExecSumPharmaRpt.html>

#### **Payment for Hardware Study**

*Status:* Completed

*CHSWC Report:*

Payment for Hardware Used in Complex Spinal Procedures Under California's Official Medical Fee Schedule for Injured Workers (RAND, September 2005)

[http://www.dir.ca.gov/CHSWC/Hardware\\_comp9.pdf](http://www.dir.ca.gov/CHSWC/Hardware_comp9.pdf)

#### **Burn Diagnostic-Related Groups (DRGs) Study**

*Status:* Completed

*CHSWC Report:*

Payments for Burn Patients under California's Official Medical Fee Schedule for Injured Workers (May 2005)

<http://www.dir.ca.gov/CHSWC/WR-263.Burn050525.pdf>

#### **Inpatient Hospital Fee Schedule and Outpatient Surgery Study**

*Status:* Completed

*CHSWC Report:*

Inpatient Hospital Fee Schedule and Outpatient Surgery Study (Gardner and Kominski, 2002)

Summary of Findings of the Inpatient Hospital Fee Schedule and Outpatient Surgery Study (2002)

<http://www.dir.ca.gov/CHSWC/HospitalFeeSchedule2002/HFSchwcssummary.html>

#### **California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work**

*Status:* Summary of proceedings in process.

*For further information...*

See the project synopsis in the Projects and Studies Section.

<http://www.dir.ca.gov/chswc/CAResearchColloquium/Colloquium.html>



## PROJECTS AND STUDIES

### **MEDICAL CARE (continued)**

#### **Integrating Occupational and Non-Occupational Medical Treatment – Pilot Project: Union Janitors and Unionized Building-Maintenance Employers**

*Status:* In Process

*For further information...*

See the project synopsis in the Projects and Studies section.

#### **Occupational and Non-Occupational Integrated Care (ONIC) Roundtables**

*Status:* Completed

*CHSWC Report:*

Summary of Occupational and Non-Occupational Integrated Care Roundtables (December 2008)

[http://www.dir.ca.gov/chswc/Reports/SummaryOandNO\\_ICR2008.pdf](http://www.dir.ca.gov/chswc/Reports/SummaryOandNO_ICR2008.pdf)

#### **CHSWC Study on 24-Hour Care**

*Status:* Completed

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Reports:*

24-Hour Care Roundtable, Summary of December 7, 2006

<http://www.dir.ca.gov/CHSWC/Reports/24-Hour-Care-Final.pdf>

Assessment of 24-Hour Care Options for California (RAND 2004)

<http://www.dir.ca.gov/CHSWC/Reports/24HourCare.pdf>

CHSWC Background Paper: Twenty-four Hour Care (October 2003)

[http://www.dir.ca.gov/CHSWC/CHSWC\\_24hCare.pdf](http://www.dir.ca.gov/CHSWC/CHSWC_24hCare.pdf)

#### **Workers' Compensation Medical Billing Process**

*Status:* Completed

*For further information...*

*CHSWC Background Paper:*

Background Information on Workers' Compensation Medical Billing Process, Prepared for the Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations (2003)

#### **Workers' Compensation Medical Payment Systems**

*Status:* Completed

*CHSWC Staff Report:*

Workers' Compensation Medical Payment Systems: A Proposal for Simplification and Administrative Efficiency, Prepared for the Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations (2003)

[http://www.dir.ca.gov/CHSWC/CHSWC\\_WCMedicalPaymentSystem/CHSWC\\_WCMedicalPaymentSystem.pdf](http://www.dir.ca.gov/CHSWC/CHSWC_WCMedicalPaymentSystem/CHSWC_WCMedicalPaymentSystem.pdf)

Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program (RAND, 2003)

<http://www.dir.ca.gov/CHSWC/Reports/AdoptingMedicareFeeSchedules-summary.pdf>



## **VIII. COMMUNITY CONCERNS**

### **Analysis of WCIRB Pure Premium Rates**

*Status:* Completed

*CHSWC Report:*

Analysis of Proposed WCIRB 2009 Pure Premium Rates Submitted to the California Department of Insurance, September 23, 2008

[http://www.dir.ca.gov/chswc/Reports/Analysis\\_of\\_proposed\\_WCIRB\\_2009\\_pure\\_premium\\_rates-20080923.pdf](http://www.dir.ca.gov/chswc/Reports/Analysis_of_proposed_WCIRB_2009_pure_premium_rates-20080923.pdf)

### **Public Access to Workers' Compensation Insurance Coverage Information**

*Status:* Completed

*CHSWC Report:*

CHSWC Issue Paper on Public Access to Workers' Compensation Insurance Coverage Information (April 2005)

<http://www.dir.ca.gov/CHSWC/ProofofCoverage.pdf>

### **DWC Workers' Compensation Audits**

*Status:* In process

*CHSWC Report:*

Draft CHSWC Response to Community Concerns Regarding DWC Workers' Compensation Audits (February 2007)

[http://www.dir.ca.gov/CHSWC/Reports/DWC\\_Audits\\_022107.pdf](http://www.dir.ca.gov/CHSWC/Reports/DWC_Audits_022107.pdf)

### **U.S. Longshore and Harbor Workers' Compensation Market in California**

*Status:* Completed

*CHSWC Report:*

CHSWC Issue Paper on the United States Longshore and Harbor Workers' Compensation Market in California (April 2005)

<http://www.dir.ca.gov/CHSWC/USLongshoreAndHarborPaper.pdf>

### **Benefit Simulation Model**

*Status:* Completed

*For further information...*

A CD with the "Workers' Compensation Benefit Simulation Model" with instructions for its use is available for purchase from CHSWC.

### **Workers' Compensation and the California Economy**

*Status:* Completed

*CHSWC Report:*

Update – Workers' Compensation and the California Economy (April 2000)

<http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html>

### **Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the 1989 and 1993 Reforms** (*Special Study at the Request of the Legislature*)

*Status:* Completed

*CHSWC Reports:*

Workers' Compensation Costs and Benefits After the Implementation of Reform Legislation (August 1999)

<http://www.dir.ca.gov/CHSWC/Report.htm>

Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability (August 1999)

<http://www.dir.ca.gov/CHSWC/ExecutiveSummary.htm>

## PROJECTS AND STUDIES

### **COMMUNITY CONCERNS (continued)**

Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits (August 1999)

<http://www.dir.ca.gov/CHSWC/Summary.htm>

CHSWC 1998-99 Annual Report incorporates this report.

### **Workers' Compensation Anti-fraud Activities**

*Status:* Completed

*CHSWC/FAC Study*

Medical Payment Accuracy Study

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Reports:*

Reporting Workers' Compensation Injuries in California: How Many are Missed? (August, 2008)

<http://www.dir.ca.gov/chswc/Reports/ReportingWorkersCompensationInjuriesinCalifornia2008August.pdf>

Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? What is the Impact on Honest Employers? (August 2007)

[http://www.dir.ca.gov/chswc/Reports/Fraud in WC payroll Report Aug 14 2007.pdf](http://www.dir.ca.gov/chswc/Reports/Fraud%20in%20WC%20payroll%20Report%20Aug%2014%202007.pdf)

Split Class Codes: Evidence of Fraudulent Payroll Reporting, (August 2007)

[http://www.dir.ca.gov/chswc/Reports/Split Class Codes 13Aug2007.pdf](http://www.dir.ca.gov/chswc/Reports/Split%20Class%20Codes%2013Aug2007.pdf)

Workers' Compensation Anti-Fraud Activities – Report on the CHSWC Public Fact-Finding Hearing (September 1997)

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudreport.html>

Report on the Campaign Against Workers' Compensation Fraud (May 2000)

<http://www.dir.ca.gov/CHSWC/Fraud/Fraudcover.html>

Report on the Workers' Compensation Anti-Fraud Program (August 2001)

<http://www.dir.ca.gov/CHSWC/Finalfraudreport0801.html>

Summary Statistics, FY 1999-2000:

<http://www.dir.ca.gov/CHSWC/WCSAntiFraudAttachment.html>

### **Illegally Uninsured Employers Study**

*Status:* Completed

*CHSWC Reports:*

Uninsured Employers Benefits Trust Fund, Background Paper, (April, 2007)

<http://www.dir.ca.gov/CHSWC/Reports/UEBTF-Final.pdf>

Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring Them Into Compliance (December 1998)

<http://www.dir.ca.gov/CHSWC/uefcover.html>

### **State of the California Workers' Compensation Insurance Industry**

*Status:* Completed

*CHSWC Background Papers:*

Draft Study of the California Workers' Compensation Insurance Market Study, Hays (September 2003)

[http://www.dir.ca.gov/CHSWC/Reports/CA InsuranceMarketStudy.pdf](http://www.dir.ca.gov/CHSWC/Reports/CA%20InsuranceMarketStudy.pdf)

State of the California Workers' Compensation Insurance Industry, Background Paper (April 2002)

<http://www.dir.ca.gov/CHSWC/StateInsuranceIndustry2002/Stateinsuranceindustry042002.html>

## PROJECTS AND STUDIES

### IX. CHSWC ISSUE PAPERS

#### **Study of Labor Code Section 132a**

*Status:* Completed

*CHSWC Memorandum:*

Update on Labor Code Section 132a and Employer Termination of Health Insurance Coverage: Calif. Supreme Court Decision in *State of California, Dept of Rehab v. WCAB (Lauher)* (2003)

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.doc> or

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.pdf>

#### **Information on Industrial Medical Council (IMC) Disciplinary Actions Taken on Qualified Medical Evaluators (QMEs)**

*Status:* Completed

*CHSWC Background Paper:*

Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulation of QMEs (July 2003)

[http://www.dir.ca.gov/chswc/CHSWCReport\\_IMCDisciplinaryrevJuly2003.doc](http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.doc) or

[http://www.dir.ca.gov/chswc/CHSWCReport\\_IMCDisciplinaryrevJuly2003.pdf](http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.pdf)

#### **CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California**

*Status:* Completed

*For further information...*

See the project synopsis in the Projects and Studies section.

*CHSWC Paper:*

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California (November 2004)

[http://www.dir.ca.gov/CHSWC/CHSWC\\_AccesstoFunds.pdf](http://www.dir.ca.gov/CHSWC/CHSWC_AccesstoFunds.pdf) or

[http://www.dir.ca.gov/chswc/CHSWC\\_Accesstofunds.doc](http://www.dir.ca.gov/chswc/CHSWC_Accesstofunds.doc)

#### **Proof of Coverage**

*Status:* Completed

*CHSWC Background Paper:*

Workers' Compensation Compliance and Proof of Coverage (February 2006)

<http://www.dir.ca.gov/CHSWC/Papers/ProofOfCoverage2006.pdf>

#### **Tax Status of Self-Insured Groups**

*Status:* Completed

*CHSWC Issue Paper:*

Issue Paper on Tax Status of Self-Insured Groups (April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/SIG-TaxStatus.pdf>

#### **Strategic Plan**

*Status:* Completed

*CHSWC Report:*

CHSWC Strategic Plan (November 2002)

<http://www.dir.ca.gov/CHSWC/StratPlanReport2002/Stratplan2002.html>

## PROJECTS AND STUDIES

### **X. DISASTER PREPAREDNESS AND TERRORISM**

#### **Impact of Terrorism on Workers' Compensation**

*Status:* Completed

*CHSWC Issue Paper:*

CHSWC Background Paper on the Impact of Terrorism and California Workers' Compensation  
(April 2006)

<http://www.dir.ca.gov/CHSWC/Reports/ImpactTerrorism-WC.pdf>

#### **Forum on Catastrophe Preparedness: Partnering to Protect Workplaces (April 2006)**

*Status:* Completed

*CHSWC Staff Report:*

A Report on the Forum on Catastrophe Preparedness: Partnering to Protect Workplaces  
(April 2006)

<http://www.dir.ca.gov/chswc/forum2006.html>

## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### Introduction

Since its inception, the Commission on Health and Safety and Workers' Compensation (CHSWC) has been working closely with the health and safety and workers' compensation community including employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.

In certain studies and projects, CHSWC partners with other state agencies or other organizations in studies and projects of mutual interest. Key partnerships include:

### **Workers' Compensation Fraud Working Committee**

#### ***Partnership with the Department of Insurance***

Insurance Commissioner Poizner organized an Advisory Task Force on Insurance Fraud with several working committees. CHSWC Executive Officer Christine Baker served as a member of the Working Committee and was the Chair of the Workers' Compensation Expert Working Group working in partnership with the Department of Insurance (CDI). The goal of the Workers' Compensation Fraud Working Committee was to create a report for the Fraud Task Force that would guide its efforts to improve the efficiency and effectiveness of California's anti-fraud efforts.

Members of the Workers' Compensation Expert Working Group:

Christine Baker, CHSWC, Chair of the Workers' Compensation Fraud Working Committee  
Dennis Ayers, Dun & Bradstreet  
Dave Bellusci, Workers' Compensation Insurance Rating Bureau  
Doug Benner, M.D., Kaiser Permanente Medical Group  
Laura Clifford, Employers Fraud Task Force  
Lilia Esther C. Garcia, Maintenance Cooperation Trust Fund, Employment Law Investigation  
David Goldberg, CDI Fraud Division  
Scott Hauge/Lori Kammerer, Small Business California/Cal Insurance & Associates  
Vanessa Himelblau, CDI  
Matthew Hopkins, Berkshire Hathaway Homestate Co., Workers' Compensation Specialty Division, Special Investigations Unit  
Dori Rose Inda, Watsonville Law Center  
Joel LeBow, Liberty Mutual Group, Special Investigations Unit  
Kelly Lewis, Small Business California  
Ralph Matthews, Acclamation Insurance Management Services  
Michael Nolan, California Workers' Compensation Institute  
Don Marshall, Zenith Insurance  
Sean McNally, Grimmway Farms  
Destie Overpeck, Department of Industrial Relations Division of Workers' Compensation  
Ranney Pageler, Employers Insurance Company of Nevada, Fraud Investigations Department  
Rick Plein, CDI Fraud Division  
Bill Randall, Capital Claims Service  
Tom Rankin, California Labor Federation, AFL-CIO/WORKSAFE!  
Darlyn Regan, Fraud Assessment Commission/State Compensation Insurance Fund  
Mark Voss, CDI Fraud Division  
Lance Wong, Los Angeles County District Attorney's Office  
Bill Zachry, Fraud Assessment Commission/Safeway

Consultants:

Frank Neuhauser, University of California (UC), Berkeley  
Juliann Sum, UC Berkeley

## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### **California Workers' Compensation Medical Payment Accuracy Study**

***Partnership with the Fraud Assessment Commission, William Zachry and Christine Baker, Co-Chairs***

CHSWC and the Fraud Assessment Commission (FAC) conducted a joint study on estimating the extent of medical provider fraud in the California workers' compensation system. Funds were allocated by FAC in 2006 for the study, and Navigant Consulting was selected to conduct the Medical Payment Accuracy Study.

CHSWC and FAC partnered with CDI on the study whose objectives were to:

- Determine the extent of workers' compensation medical overpayments and underpayments of all types in order to allocate the appropriate level of resources to detect and evaluate suspected medical provider fraud in California.
- Develop baseline measurements for medical overpayments and under-payments of all types including suspected fraud, waste, abuse, billing and processing errors.

### **Quality-of-Care Indicators Study**

***Partnership with RAND and Zenith Insurance Company***

CHSWC is partnering with RAND and Zenith Insurance Company on a demonstration project that will suggest a mechanism for monitoring and improving the quality of care provided to injured workers.

The goal of the project is to demonstrate quality measurement of health care in a workers' compensation setting and involves four objectives:

- Develop quality-of-care indicators for one work-related disorder, carpal tunnel syndrome.
- Apply the quality-of-care indicators to patients from several medical networks.
- Publish an anonymous report card comparing quality across networks.
- Consider how to translate the project into an ongoing quality-monitoring system.

### **Occupational and Non-Occupational Integrated Medical Care Pilot Project**

***Partnership with the California HealthCare Foundation, DMS Facility Services, and the Service Employees International Union Local 1877***

The California HealthCare Foundation (CHCF) awarded a grant to CHSWC to develop a proposal to integrate occupational and non-occupational medical treatment, an alternative that could offer savings on medical utilization, unit pricing, and administrative expenses while potentially offering improvements in the quality of health care. As a secondary advantage, the project is expected to expand access to affordable medical insurance.

The Service Employees International Union (SEIU) Local 1877 requested assistance from CHSWC and the University of California (UC), Berkeley with negotiating a collective bargaining agreement that would integrate both occupational and non-occupational medical treatment under the union's Taft-Hartley Health and Welfare Trust. A pilot program integrating occupational and non-occupational care began in February 2008 between DMS Facility Services, a unionized employer with employees throughout California, and SEIU 1877. The pilot is part of a carve-out agreement. The pilot uses Kaiser Permanente for delivery of both workers' compensation medical care and group health benefits. The goal of the pilot is to identify areas of administrative savings and ways to reduce litigation. UC Berkeley is conducting data analysis for pricing issues and developing the evaluation strategy.

## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### **Occupational and Non-Occupational Integrated Medical Care Roundtables**

#### ***Partnership with the Department of Industrial Relations, California Manufacturers & Technology Association, American Federation of Labor, and the University of California, Berkeley***

The Department of Industrial Relations (DIR), the California Manufacturers & Technology Association (CMTA), CHSWC, and UC Berkeley held a roundtable for private sector employers. Roundtable discussion addressed issues relating to integrating workers' compensation medical care and group health. The purpose of the discussion was to assist employers in evaluating their potential for integrating care and undertaking steps towards that goal. Discussion covered such topics as: the pros and cons of integrating care; different models of integration; specific steps towards integrating care; and potential barriers and how to address them.

The American Federation of Labor (AFL-CIO) and CHSWC held a roundtable for labor on issues relating workers' compensation medical care and group health. The next steps from the roundtable would be to work with unions on providing specific details and resources on carve-outs and integration of occupational and non-occupational medical care. In addition, a panel of experienced carve-out participants will be organized in which union and employer representatives can share their experiences with unions and employers that are considering carve-outs.

CHSWC and representatives of the California Applicants' Attorneys Association (CAAA) held a discussion on integration of care. Issues raised included: whether legislative or constitutional changes would be needed; what the role of treatment guidelines and the requirements for record keeping would be under integration; what the process for permanent disability would be; whether there would be medical coverage if an employee changes employer; and whether integration of care models exist in other states.

A public sector working group was held by CHSWC for Executive Branch participants and CalPERS. The next steps from the roundtable were to: provide a cost/benefit analysis of alternatives; review what already has been drafted by the Governor's Office and other parties on integration of care; and obtain figures from the Department of Personnel (DPA) about what the State of California is paying for group health.

A roundtable with group health insurers and employer purchasing coalitions was also held by CHSWC. The next steps from the roundtable were to: meet with CalPERS to look at possible pilot solutions; to identify interest on the part of the State; to identify a large self-insured employer to consider integrated care; and to provide more information on the integrated care pilot, when available.

### **The IAIABC International Forum on Disability Management**

#### ***Partnership with International Association of Industrial Accident Boards and Commissions***

CHSWC is partnering with the International Association of Industrial Accident Boards and Commissions (IAIABC) on The International Forum on Disability Management (IFDM). The Forum was held in Berlin, Germany, September 22-24, 2008, and will be held in Los Angeles, California, September 13-16, 2010. The purpose of the Forum is to share information about disability management and to identify barriers and ways to overcome barriers in disability management systems. Participants will develop policy recommendations to improve management of occupational disabilities by government, employers and service support organizations.

The Forum will bring together policymakers, such as legislators and heads of the executive branches, dynamic leaders in labor, business and insurance, and experts in disability management, including people mastering personal disabilities. Representatives of organizations with an interest in disability issues and a commitment to more effective systems for overcoming barriers to the rehabilitation and full integration of workers with disabilities in gainful employment will participate in the discussion.

## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### **Northern California Summit and Consortium on Promoting Stay-at-Work/Return-to-Work *Partnership with employers, medical providers, insurers, and non-profit disability organizations***

CHSWC has partnered with employers, medical providers, insurers, and non-profit disability organizations to plan the first Northern California Summit on Promoting Stay-at-Work/Return-to-Work (SAW-RTW).

The Northern California summit of experts convened in Pleasanton, California, on June 21, 2007, to discuss reducing medically unnecessary time off work for injured or otherwise disabled employees. The goal of the summit was to advance toward sustained solutions for preventing needless time away from work and the realignments needed to meet this goal.

The Northern California Consortium to Promote SAW-RTW was developed following the June 2007 California Summit. Its mission is to provide resources and strategies for interested stakeholders to ensure that more California employees stay at work and/or return to work.

Consortium workgroups are addressing key SAW-RTW issues including: employer education; metrics and measuring results; web-accessible resources for clinicians; communications tools for employees, employers, and physicians; and SAW-RTW legislative activities.

The Consortium is also soliciting ongoing feedback from June 2007 Summit participants about positive changes related to SAW-RTW in their organizations and posting that feedback along with resources on SAW-RTW on the Consortium's website: <http://saw-rtw-californiaconsortium.com>. The Consortium has also developed a Speakers Bureau for disseminating SAW-RTW information to interested stakeholders.

### **Health and Safety Research Agenda**

#### ***Partnership with employers, workers, and occupational health and safety governmental agencies and researchers***

CHSWC believes that it is important to conduct research that results in both knowledge and policies that will lead to elimination of workplace fatalities and reduction in injuries and make California workplaces and workers the safest, healthiest and most productive in the country. At its August 9, 2007 meeting, the Commission voted to convene a Health and Safety Advisory Committee.

CHSWC held a Health and Safety Advisory Committee meeting on November 19, 2007, with various stakeholders to develop a health and safety research agenda. A Health and Safety Research Agenda has been developed as a result of this meeting, and several health and safety studies are in process.

### **Workplace Wellness: How to Address Both Occupational and Lifestyle Issues on the Job**

#### ***Partnership with employers of large, medium and small-sized companies, labor, medical providers and federal and state agencies***

Integration of wellness and occupational health and safety has become a key focus by employers of large, medium and small-sized businesses and labor. Efforts being made to develop an integrated approach to health promotion, and occupational health and safety programs have focused on research and public health literature, as well as best practices of wellness programs implemented by employers.

CHSWC has hosted a Workplace Wellness Roundtable including participants from employers, labor, research organizations, and state agencies. The purpose of the Workplace Wellness Roundtable was to begin a dialogue about strategic approaches, both short-term and long-term, to integrating workplace wellness and occupational health and safety programs in California.



## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### **Schools Injury and Illness Prevention Program Project**

***Partnership with employers, workers, schools districts, and the Governor's Office of Homeland Security and other state agencies***

Per the mandate set forth in the Labor Code, CHSWC will assist inner-city schools or any school district in establishing effective occupational injury and illness prevention programs (IIPPs). CHSWC has established a Schools IIPP model program to help schools statewide improve their injury and illness prevention practices and resources. The program will include training and resources to enable schools or school districts to develop or improve IIPPs and make other health and safety improvements that will help protect school employees from injuries and illnesses on the job. The target audience will focus on K-12 schools and school districts at high risk of occupational injury and illness.

CHSWC has hosted a roundtable discussion that brought together representatives from schools and school districts, Governor's Office of Homeland Security, labor, and school-related agencies and organizations in California.

The objectives of the meeting were to determine how best to structure and implement the model program, including a training program for schools or school districts with the priority training going to schools or school districts with high incidence rates and a pilot with schools from around the State.

### **Health and Safety Training for Small Business Restaurant Owners**

***Partnership with the State Compensation Insurance Fund and the California Restaurant Association***

One of the components of CHSWC's Worker Occupational Safety and Health Training and Education Program (WOSHTEP) focuses on small business resources. CHSWC has partnered with the State Compensation Insurance Fund (SCIF) and with the California Restaurant Association (CRA) to provide health and safety trainings to small business restaurant owners and managers. Preliminary findings from the evaluation of these trainings have been positive.

### **Health and Safety Training and Resources for Small Businesses Across Industries**

***Partnership with the State Compensation Insurance Fund***

Health and safety resources for small businesses in any industry have been developed through WOSHTEP. CHSWC has partnered with SCIF to implement training and disseminate health and safety information to small businesses throughout the State of California.

### **Health and Safety Training and Resources for the Janitorial Industry**

***Partnership with the State Compensation Fund and the Service Employees International Union Local 1877***

Health and safety training and resources have been developed for the janitorial industry through WOSHTEP. CHSWC has partnered with the State Compensation Insurance Fund (SCIF) and the Building Skills Partnership, a program of the Leadership Training & Education Fund between the California Janitors' Union, SEIU 1877, and employers.

## CHSWC PARTNERSHIPS WITH THE COMMUNITY

### **Workers' Compensation Issue Brief April 2008 No.9**

#### ***Partnership with the National Academy of Social Insurance and the California HealthCare Foundation***

CHSWC and the National Academy of Social Insurance (NASI) in Washington, D.C., with support from CHCF, co-produced the brief "Workers' Compensation in California and in the Nation: Benefit and Employer Cost Trends, 1989-2005." The brief compares the experience in California with the rest of the nation from 1989 through 2005, a time of rapid change in workers' compensation spending nationwide and in California, in particular.

## CHSWC AND THE COMMUNITY

**For Information about the Commission on Health and Safety and Workers' Compensation (CHSWC) and its activities:**

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Check out [www.dir.ca.gov/chswc](http://www.dir.ca.gov/chswc) for:

- What's New
- Research Studies and Reports
- Information Bulletins
- Commission Members
- Meeting Schedules and Minutes
- DIR Young Workers Website
- Information for Workers and Employers
- WOSHTEP
- Conferences
- Public Comments and Feedback
- Resources

### **CHSWC Publications**

In addition to the many reports listed in the CHSWC Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports  
1994 through 2008

CHSWC Strategic Plan 2002

## CHSWC AND THE COMMUNITY

### **Community Activities**

CHSWC is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

#### **Asian Pacific Chamber of Commerce**

Executive Officer presentation

#### **California Wellness Foundation Conference**

Executive Officer presentation

#### **California Workers' Comp Forum**

Executive Officer presentation (Northern CA)  
6<sup>th</sup> Annual Conference (Southern CA)

#### **California Workers' Compensation Institute**

2008 Annual Meeting

#### **CalPRIMA/PARMA Joint Workshop on Special Risk**

Executive Officer speech

#### **Certified Property and Casualty Underwriter**

Executive Officer presentation

#### **Department of Industrial Relations**

Division of Workers' Compensation  
14<sup>th</sup> Annual Conference  
DWC Return to Work Advisory Committee, Technical Assistance

#### **Department of Insurance**

Fraud Assessment Commission Meeting  
Chair, Fraud Focus Group Meeting  
Fraud Task Force Meeting  
Fraud Writing Sub-Committee Meeting

#### **Employer's Fraud Task Force**

Executive Officer presentation

#### **Integrated Benefits Institute**

Executive Officer presentation

#### **International Association of Industrial Accident Boards and Commissions**

93rd Annual Convention  
All Committee Conference  
International Forum on Disability Management 2008

#### **National Academy of Social Insurance**

2008 Board Meeting  
Audit Committee Meeting

#### **Public Agency Risk Managers Association**

2008 Annual Conference  
Executive Officer presentation

#### **RAND Institute**

Advisory Meeting

## CHSWC AND THE COMMUNITY

### **State Compensation Insurance Fund**

Board Meeting

### **Workers' Compensation Enforcement Collaborative**

Advisory meeting

### **Workers' Compensation Insurance Rating Bureau**

Experience Rating Task Force

Experience Modification meeting

Claims Committee meeting

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